



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

FOURTH SECTION

CASE OF GIDEL v. POLAND

(Application no. 75872/01)

JUDGMENT

STRASBOURG

14 October 2003

FINAL

24/03/2004

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 Gidel v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM, *judges*,

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

Having deliberated in private on 23 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 75872/01) 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, Mr Józef Gidel ("the applicant"), on 19 December 2000.

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

3. On 30 April 2002 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings 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.

THE FACTS

4. The applicant, Mr Józef Gidel, is a Polish national, who was born in 1959 and lives in Kraków, Poland.

5. The applicant runs a car repair shop in Kraków. On 11 March 1993 he sued a certain I.K. and the State Treasury before the Kraków District Court (*Sąd Rejonowy*), seeking payment for the repair of I.K.'s car. On 27 August 1993 the statement of claim was served on I.K. who, at that time, lived in Germany.

6. The first hearing was set down for 21 December 1993 but was later adjourned because the presiding judge was ill. The court held hearings on 26 April, 26 August, 4 November 1994 and on 21 March 1995.

7. Subsequently, the defendant challenged the impartiality of all the judges of the Kraków District Court. On 8 November 1995 the Kraków Regional Court (*Sąd Wojewódzki*) dismissed his challenge, finding that it lacked any basis and that the relevant statutory requirements for the disqualification of the judges were not satisfied. His further appeal was dismissed by the Kraków Court of Appeal (*Sąd Apelacyjny*) on 30 January 1996.

8. On 23 October, 1 December 1995 and on 13 May 1996 the applicant sent letters to the court asking for a hearing date to be fixed as soon as possible.

9. On 30 August 1996 the court ordered an expert to prepare a report. However, the expert failed to comply with the court's order. On 21 October 1996 the court ordered yet another expert to prepare a report within one month. It was submitted to the court on 17 December 1996.

10. On 28 March 1997 the applicant again asked the court to fix a date for a hearing.

11. On 12 December 1997 the court held a hearing.

12. At the hearing held on 3 April 1998 the court ordered that the claim against the State Treasury be examined separately. The next hearing, scheduled for 12 May 1998, was cancelled as there was no courtroom available.

13. On 1 April 1998 I.K. challenged the impartiality of the presiding judge. On 1 June 1998 a panel of three judges, sitting as the Kraków District Court, dismissed the defendant's challenge, ruling that it was totally unsubstantiated. The court also imposed a fine on him, holding that the challenge had been made in bad faith. His further appeal was dismissed by the Kraków Regional Court on 10 February 1999.

14. On 26 June 1998 the Kraków District Court gave an interlocutory judgment. It dismissed the applicant's claim against the State Treasury on the ground that its liability had not been established.

15. Meanwhile, the defendant had informed the trial court that he had moved to Poland. This resulted in Kraków-Śródmieście District Court no longer having territorial jurisdiction over the case. On an unknown date the applicant was asked to indicate in which court he wished to pursue his claim: Kraków-Podgórze District Court or Kraków-Nowa Huta District Court. The applicant failed to do so. On 12 July 2000, of the court's own motion, the case was referred to the Kraków-Podgórze District Court.

16. On 16 October 2000 the applicant sent a letter to the President of the Kraków Regional Court. He complained about the slow conduct of the proceedings. On 17 November 2000, in reply to his complaints, the President observed that the proceedings were indeed lengthy and gave his assurance that he would supervise their conduct.

17. At the hearing held on 9 February 2001 the Kraków District Court gave judgment. On 27 April 2001 the applicant appealed. On

15 October 2001 the Kraków District Court rejected the appeal, as the applicant had failed to pay the required court fee within the statutory time-limit. On 30 January 2002 the Kraków Regional Court quashed this decision and allowed the applicant's appeal of 27 April 2001.

18. The proceedings are pending before the Kraków Regional Court.

THE LAW

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

19. The applicant complained that the length of the 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

20. The Court first observes that the proceedings began on 11 March 1993 when the applicant lodged his claim with the Kraków District Court. However, the period to be taken into consideration began 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. In the light of the material available to the Court at the date of the adoption of the present judgment, the proceedings are still pending. Their length has accordingly amounted to more than 10 years and 3 months.

B. Admissibility

21. 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.

C. Merits

1. *The applicant's submissions*

22. The applicant maintained that his case had not been complex. During the proceedings the court needed to obtain only one expert report and had heard evidence from nine witnesses.

23. He further submitted that he had not contributed to the overall length of the proceedings.

24. The applicant also criticised the conduct of the trial court, which in his opinion had contributed to the length of the proceedings. He emphasised that there had been a significant period of inactivity between June 1998 and July 2000 when the trial court remained totally passive. Lastly, he stated that the court had failed to handle his case with due diligence.

25. The applicant concluded that there had been a violation of Article 6 § 1 of the Convention.

2. *The Government's submissions*

26. The Government submitted that the case was not particularly complex. However, they stressed that it had involved a certain procedural complexity, as the trial court needed to obtain an expert report and hear evidence from witnesses. Moreover, one of the defendants had lived in Germany.

27. They were of the view that the applicant contributed to the prolongation of the proceedings, since he failed to indicate the court which had territorial jurisdiction over the case.

28. The Government further argued that it was I.K. who had mostly contributed to the length of the proceedings by submitting numerous motions and challenging the impartiality of the trial court.

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

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

3. *The Court's assessment*

31. 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, *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 60).

32. The Court considers that the case was not particularly difficult to determine. Even though it involved a certain degree of complexity on account of the need to obtain evidence, it cannot be said that this in itself justified the length of the proceedings. Furthermore, the remaining grounds invoked by the Government cannot justify the length of the proceedings either.

33. As regards the conduct of the applicant, the Court observes that it does not appear that he had contributed to the prolongation of the trial.

34. As to the conduct of the authorities, the Court first notes that there was a significant delay of one year, i.e. between 17 December 1996 and 12 December 1997, when the court remained entirely passive (see paragraphs 9-11 above). It further observes that there was a delay of more than two years, i.e. between 26 June 1998 and 9 February 2001, when no hearing was held (see paragraphs 14 and 15). The Court considers that the Government's observations do not explain these delays.

35. Consequently, the Court concludes that neither the above-mentioned delays, nor the overall length of the proceedings, which was more than ten years, are compatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

36. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant sought an award of 200,000 Polish zlotys in respect of pecuniary damage. Under the head of non-pecuniary damage he claimed a sum of 100,000 Polish zlotys for the damage that he suffered on account of the fact that the Court declared inadmissible his complaint concerning unfairness of the proceedings. Lastly, he asked for 200,000 Polish zlotys for non-pecuniary damage sustained as a result of the protracted length of the proceedings.

39. The Government submitted that the applicant's claims were excessive.

40. As regards the pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicant 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 him under that head (see, *mutatis mutandis Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI)

41. 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 6,000 euros ("EUR") under that head.

B. Costs and expenses

42. The applicant also claimed 3,000 Polish zlotys for the costs and expenses incurred before the Court.

43. The Courts observes that the applicant did not submit any specifications of fees or other expenses. The Court observes that for an award to be made it has to be satisfied that the costs and expenses were actually and necessarily incurred and were reasonable as to quantum (see, among other authorities, the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, § 36). The Court accordingly dismisses the claim.

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* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 6,000 (six 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President