



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

FOURTH SECTION

CASE OF ŁOBARZEWSKI v. POLAND

(Application no. 77757/01)

JUDGMENT

STRASBOURG

25 November 2003

FINAL

25/02/2004

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 Łobarzewski 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 4 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 77757/01) 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 Roman Łobarzewski ("the applicant"), on 2 November 2001.

2. The applicant was represented by Mr W. Hermeliński, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of the Foreign Affairs.

3. On 17 December 2002 the Fourth Section decided to communicate the complaint concerning the length of the proceedings and the alleged lack of effective remedy 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 was born in 1937 and lives in Brwinów, Poland.

A. Facts prior to 1 May 1993

5. On 15 March 1985 the applicant instituted before the Warsaw District Court (*Sąd Rejonowy w Warszawie*) civil proceedings concerning an inheritance dispute (*o zachowek*) against Mr A.Ł. The applicant sought a part of his late mother's estate.

6. Between April 1985 and January 1993 the court held over twenty hearings.

7. Between March 1988 and February 1990 as well as between June 1991 and December 1992 no hearings were held.

8. The hearing held on 11 January 1993 was adjourned.

B. Facts after 30 April 1993

9. On 25 April 1994 the court, sitting *in camera*, requested two expert opinions.

10. On 3 November 1994, 29 March and 26 June 1995 the Warsaw District Court obtained expert opinions.

11. On 30 January 1995 the court exempted the applicant from the court-fees.

12. On 4 August 1995 the court, sitting *in camera*, decided to prepare another expert opinion. The defendant appealed against this decision. On 8 February 1996 the Warsaw District Court dismissed the appeal. The defendant's appeal against this decision was finally dismissed on 24 April 1996 by the Warsaw Regional Court.

13. On 11 October 1995 the court appointed a lawyer for the applicant.

14. On 5 August 1996 the expert submitted his opinion to the court.

15. Between 11 January 1993 and 13 December 1996 no hearings were held.

16. In 1997 the court held six hearings. Some of them were adjourned because the parties were not properly notified of them.

17. On 13 February and 6 April 1998 the court held hearings.

18. At the hearing held 25 June 1998 the applicant extended his claim.

19. On 26 June 1998 the court decided to transfer the case to the Warsaw Regional Court because of the increased value of the claim.

20. At the hearing held on 14 May 1999 the Warsaw Regional Court discontinued the proceedings with regard to the applicant's sister.

21. On 14 October 1999 the applicant extended his claim and applied to the court to give an interim ruling. On 18 September 2000 the court dismissed his application for the interim ruling. The applicant's appeal was dismissed on 1 March 2001 by the Warsaw Court of Appeal.

22. On 26 October 2001 the Warsaw Regional Court held a hearing at which it heard both parties.

23. In November 2001 the court, sitting *in camera*, requested another expert opinion.

24. In July and August 2002 the President of the Warsaw Regional Court informed the applicant that “due to the delay in the proceedings the case is going to be under constant supervision of the President”.

25. Subsequently, a hearing scheduled for 13 March 2003 was adjourned at the applicant's request. The new date was set for 23 March 2003.

26. The proceedings are pending before the Warsaw Regional Court.

THE LAW

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

27. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement 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 ... hearing within a reasonable time by [a] ... tribunal...”

28. The Government contested that argument.

29. The Court notes that the period to be taken into consideration began not on 15 March 1985 when the applicant initiated the proceedings, but on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. The proceedings are still pending (see paragraphs 5 and 26 above).

It follows that the proceedings have lasted so far over eighteen years and seven months out of which ten years and six months are taken into consideration by the Court.

30. In assessing the reasonableness of time in question the Court will have regard to the state of the case on 1 May 1993.

A. Admissibility

31. The Court notes that the 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. The Court will therefore declare it admissible.

B. Merits

1. The submissions before the Court

(a) The applicant

32. The applicant submitted that his case was not particularly complex. He further underlined that the number of expert opinions did not justify the overall length of the proceedings.

33. The applicant denied that his conduct during the proceedings contributed to the delay. In particular, he submitted that the extension of his claim was the obvious consequence of the length of the proceedings given the inflation in Poland at the material time.

34. As regards the conduct of the domestic authorities, the applicant pointed out that the President of the Warsaw Regional Court acknowledged that there was a delay in the case and decided to personally supervise the proceedings (see paragraph 24 above). The applicant was of the opinion that the Government had not provided convincing explanations for several periods of inactivity, in particular, a four-year long period between the hearings (see paragraph 15 above), lengthy preparations of expert opinions ranging from seven to fourteen months (see paragraphs 9 and 10 above) and delays in the examination of the parties' appeals and applications (see paragraphs 12 and 21 above).

(b) The Government

35. The Government submitted that the case was of “moderate complexity” and that in order to establish the facts of the case the domestic courts prepared in total eleven expert opinions.

36. The Government further argued that the applicant partly contributed to the length of the proceedings because he had twice changed the value of his claim and one hearing had been adjourned on the application filed by the applicant's lawyer. The Government acknowledged that the other party to the proceedings also contributed to the delay.

37. As regards the conduct of the domestic authorities, the Government submitted that they proceeded with due diligence and there were no substantial periods of inactivity for which the domestic courts could be held responsible. With regard to a period of almost four years during which no hearings were held, the Government argued that the domestic court had not remained inactive because it had ordered several expert opinions.

38. Finally, the Government submitted that what was at stake for the applicant was of a pecuniary nature solely and no special diligence was required from the domestic authorities.

2. The Court's assessment

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

40. The Court considers that the case involved a certain degree of complexity as the facts of the case had to be assessed against the expert evidence. However, the complexity of the case cannot explain the overall length of the proceedings.

41. As regards the conduct of the applicant the Court is not persuaded by the Government's submission that he significantly contributed to the delay in examining the case, in particular, by changing the value of his claim (see paragraphs 19, 33 and 36 above). The Court observes that, while an applicant is entitled to make use of his procedural right to extend his claim in a civil case, he must be aware that it may lead to delays the consequences of which he would have to bear (see *Malicka-Wąsowska v. Poland*, (dec.), no. 41413/98, 5 April 2001). It is particularly true in a situation where modification of the claim results in the transfer of the case to a higher court and possibly in the repetition of some of the trial court's proceedings. The Court is of the opinion that when such extension of the claim takes place in the course of judicial proceedings which are diligently and promptly conducted, the Government cannot be held responsible for the resulting delays. On the other hand, if the proceedings have already been affected by clear delays, the extension of the claim may be regarded as the only way for the plaintiff to cope with inflation and to adjust his claim to the changing economic context. In such a situation, the applicant cannot be reasonably expected to bear the consequences of further delays resulting from his action, unless the Government proves that there was no link between the extension of the claim and the delays which have already occurred in the course of the proceedings.

The Court notes that, in the case under consideration, the applicant extended his claim after his case had already been pending before the first instance court for over thirteen years and that the proceedings had already been affected by unreasonable delays. Therefore, the Court sees no reason to find that the applicant contributed to the prolongation of the proceedings.

42. As regards the conduct of the domestic authorities the Court notes that the case has been pending before the first-instance court since its introduction in March 1985 and no decision has been given yet (see paragraphs 5 and 26 above). The Court observes that several substantial periods of inactivity occurred in the course of the proceedings. In particular, between January 1993 and December 1996 as well as between October 2001 and March 2003 the domestic court waited for expert opinions to be prepared and no hearings were held during these periods (see paragraphs 15, 22 and 25 above). In this regard the Court notes that while it is true that the domestic court had difficulty in obtaining a satisfactory expert opinion, nevertheless the expert's work in the context of judicial proceedings is supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions*

1997-VIII, § 44). Finally, the Court observes that no hearings were held between 15 May 1999 and 25 October 2001 as during this time the domestic courts were examining at two instances the applicant's application of 14 October 1999 for an interim ruling (see paragraphs 20 and 22 above). The Court notes that the Government did not provide any explanation for this delay.

43. The Court is of the view that what was at stake for the applicant in the domestic litigation was of significant importance for him.

44. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of over eighteen years and seven months, out of which approximately ten years and six months are taken into consideration by the Court, without any decision having yet been reached exceeds a reasonable time.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

45. The applicant further complained that he had no domestic remedy to complain about the excessive length of the proceedings. He relied on Article 13 of the Convention.

46. The Government submitted that at the time of lodging his application with the Court the applicant did not have at his disposal an effective remedy for his complaint under Article 6 § 1 of the Convention. However, they noted that on 4 December 2001 the Polish Constitutional Court gave judgment, in consequence of which a remedy in respect of the excessive length of proceedings had been created. The Government concluded that after 18 December 2001 the applicant had at his disposal an effective remedy and “encouraged” him to resort to that remedy.

47. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

48. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see, *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). While the *Kudła* case concerned criminal proceedings, the Court finds that this requirement applies equally to civil law procedure. Furthermore, the Court refers to its case-law to the effect that no specific remedy in respect of the excessive length of proceedings exists under Polish law (see, the *Kudła* judgment cited above § 160 and *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82-A, p. 76).

49. The Court notes that the Government acknowledged that at the time of lodging his application with the Court the applicant did not have an effective remedy in respect of the length complaint.

50. As regards the Government contention that after 18 December 2001 the applicant had an effective remedy at his disposal, the Court observes that the Government's objection is confined to a mere assertion, and that neither further information about the Constitutional Court's judgment nor any juridical practice relating thereto have been provided. In the absence of such evidence the Court finds that the Government have failed to substantiate their contention that the remedy at issue is an effective one (see *Skawinska v Poland* (dec), no. 42096/98, 4 March 2003).

51. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 150,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

54. The Government submitted that the applicant's claim was excessive.

55. The Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the instant case and deciding on equitable basis, the applicant should be awarded 11,000 euros (EUR) under the head of non-pecuniary damage.

B. Costs and expenses

56. The applicant also claimed EUR 2,000 by way of legal costs incurred in the preparation and defence of his case before the Court. This included 20 hours' work at an hourly rate of EUR 100.

57. The Government requested the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. They relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 35, § 36).

58. The Court, having regard to the nature of the issues before the Court, considers that EUR 1,500 constitutes a reasonable award.

C. Default interest

59. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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, the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 11,000 (eleven thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President