



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

FOURTH SECTION

CASE OF PERYT v. POLAND

(Application no. 42042/98)

JUDGMENT

STRASBOURG

2 December 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 Peryt v. Poland,

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

Mr M. PELLONPÄÄ, *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 13 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 42042/98) 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, Mr Wiesław Peryt (“the applicant”), on 30 October 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 his 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.

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 1 October 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Polish national, who was born in 1940 and lives in Marysin, Poland.

A. Facts prior to 1 May 1993

9. On 14 September 1992 the applicant's former wife ("the petitioner") filed with the Warsaw District Court (*Sąd Rejonowy*) an application for the division of their matrimonial property.

10. On 9 October 1992 the trial court ordered an expert opinion. On 4 December 1992 the opinion was submitted to the court.

11. The first hearing scheduled for 4 February 1993 was adjourned because of the absence of the applicant.

12. On 12 February 1993 the court dismissed the applicant's request for exemption from the court fees.

13. On 18 March 1993 the applicant applied again for the exemption from the court-fees.

14. Subsequently, the trial court held hearings on 16 March and 22 April 1993.

B. Facts after 30 April 1993

15. On 15 May 1993 the applicant requested that the court include in the case file certain documents allegedly stolen by the petitioner.

16. On 27 July 1993 the Warsaw Regional Court dismissed the applicant's second application of 18 March 1993 for exemption from the court-fees.

17. On 17 August 1993 the applicant requested the Warsaw District Court to re-open the proceedings concerning the exemption from the court-fees. On 7 September 1993 the Warsaw Regional Court (*Sąd Wojewódzki*) rejected his request on procedural grounds.

18. On 8 February 1994 the court held a hearing and heard an expert.

19. At the hearing held on 15 March 1994 the applicant asked the court to punish a witness who, in his opinion, had given a false testimony. He submits that the application was not examined. On the same day the court ordered a supplementary expert opinion. The applicant objected to this decision.

20. On 18 July 1994 the expert opinion was submitted to the court.

21. On 10 December 1994 the applicant lodged an objection against the allegedly unlawful appointment of an expert.

22. On 21 December 1994 the court held a hearing. On 23 December 1994 the applicant requested the court to admonish the petitioner for insulting him.

23. On 3 January 1995 the court delivered a partial decision. The applicant lodged an appeal against that decision. Subsequently, he was ordered to pay a fee therefor. He requested an exemption, but his request was on 24 March 1995 dismissed as unsubstantiated. The applicant appealed but on 6 June 1995 the Warsaw Regional Court dismissed his appeal. Since he had failed to pay the fee, on 6 July 1995 the Warsaw District Court rejected the applicant's appeal against the decision of 3 January 1995. The applicant appealed. On 5 January 1996 the Warsaw Regional Court dismissed his appeal.

24. On 22 March and 10 May 1996 the District Court held hearings.

25. On 5 July 1996 the court adjourned a hearing because the counsel of the petitioner was ill.

26. On 8 July 1996 the applicant challenged the presiding judge. On 15 July 1996 his challenge was dismissed. The applicant lodged an appeal against this decision but on 7 November 1996 the Warsaw Regional Court dismissed it.

27. In the meantime, a hearing scheduled for 8 August 1996 was adjourned.

28. On 6 January 1997 the applicant requested the court to reopen the proceedings terminated by the partial decision of 3 January 1995.

29. On 21 May 1997 the court held a hearing.

30. On 18 November 1997 the court rejected the applicant's request to reopen the proceedings. The applicant lodged an appeal against that decision. On 19 January 1998 the court ordered the applicant to pay a court fee for lodging the appeal. The applicant lodged an appeal against this decision but on 22 April 1998 the Warsaw Regional Court dismissed it. Accordingly, on 27 July 1998 the Warsaw Regional Court rejected the applicant's appeal against the decision of 18 November 1997.

31. On 26 January, 10 March, 30 March, 29 April, 10 May, 8 June and 14 June 1999 the District Court held hearings. On 14 June 1999 the applicant requested that the hearings be recorded on an audiocassette.

32. At the hearing held on 23 August 1999 the court appointed four experts and ordered new expert opinions. The applicant lodged an appeal against this decision, but it was rejected on 15 November 1999. The applicant appealed against this decision. On 17 January 2000 the court rejected his appeal as he failed to pay a fee for lodging it. The applicant appealed. On 22 May 2000 the Warsaw District Court ordered the applicant to pay a court fee due for lodging another appeal. On 20 July 2000 the court rejected his appeal as he failed to pay the fee.

33. One of the applications lodged by the applicant in December 1999 the court considered as a separate action for compensation against the State Treasury. This set of civil proceedings is pending.

34. On 3 November 2000 the court ordered the applicant to determine the value of one of his appeals. It appears that the applicant complied with this order. Subsequently, he was ordered by the court to pay a fee for the appeal. On 3 December 2000 the applicant appealed against this order, but it was apparently dismissed.

35. On 9 March 2001 the first expert submitted his opinion to the court.

36. Subsequently, other experts submitted their opinions to the court.

37. On 7 December 2001 the applicant requested the court to prepare new expert opinions.

38. On 11 January 2002 the court held a hearing.

39. On 18 November 2002 the applicant's former wife, who had initiated the impugned proceedings, died.

40. In December 2002 the applicant applied to stay the proceedings since the petitioner had died.

41. At the hearing held on 19 February 2003 the Warsaw District Court allowed his application and stayed the proceedings.

42. Subsequently, the applicant applied to discontinue the proceedings and lodged an appeal against the decision to stay the proceedings.

43. On 7 April 2003 the Warsaw District Court rejected his appeal against the decision of 19 February 2003.

44. The proceedings remain stayed.

THE LAW

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

45. The applicants complained that the length of the proceedings in his 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...”

46. The Government contested this view.

A. Period to be taken into consideration

47. The Court notes that the period to be taken into consideration began not on 14 September 1992 when the proceedings started, but on 1 May 1993, when the recognition of Poland of the right of individual petition took effect. The proceedings are still pending (see paragraphs 9 and 44 above).

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

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

B. Reasonableness of the length of the proceedings

1. The submissions before the Court

49. The Government submitted that the case was particularly complex. They referred to the fact that the domestic court had obtained numerous expert opinions in order to assess the value of the matrimonial property. In addition, the Government claimed that the complexity of the case originated from the subject matter of the domestic litigation as cases concerning division of matrimonial property were usually difficult to determine.

50. The Government further argued that the applicant significantly contributed to the length of the proceedings. They submitted that the applicant had been lodging many vexatious appeals and objections which made it impossible for the domestic court to proceed with the examination of the merits of his case. Moreover, his applications to the domestic courts were unclear and often contradictory which led to further delays.

51. As regards the conduct of the domestic authorities, the Government submitted that they showed due diligence and cannot be held responsible for the protracted length of the proceedings.

52. As regards what was at stake for the applicant, the Government argued that it was in the applicant's interest to prolong the proceedings.

53. The applicant disagreed with the Government's submissions. In particular, he contested the Government's assertion that he had contributed to the overall length of the proceedings. He submitted that the domestic courts were incompetent and were solely responsible for the length of the proceedings in his case. Finally, the applicant argued that what was at stake for him in the domestic proceedings was of significant importance since the litigation concerned his matrimonial property as well as the estate left by his ancestors.

2. *The Court's assessment*

54. 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, 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).

55. The Court considers that although the case involved a certain degree of complexity on account of the need to obtain extensive evidence, it cannot be said that this in itself justified the overall length of the proceedings.

56. As regards the conduct of the applicant the Court is of the opinion that he substantially contributed to the length of the proceedings. In particular, the Court notes that in the appellate proceedings against the partial decision of 3 January 1995 the applicant failed to pay the court fees and lodged numerous interlocutory appeals. In consequence, his appeal was finally rejected on 5 January 1996 (see paragraph 23 above). Moreover, on 6 January 1997 the applicant requested the court to re-open the proceedings which ended with the above-mentioned partial decision and following his appeals this set of proceedings ended on 27 July 1998. In addition, the applicant challenged the presiding judge (see paragraph 26 above), disputed the manner in which the minutes of hearings were taken and requested to record them on audiocassette (see paragraph 31 above), asked to punish a witness and the petitioner (see paragraphs 19 and 22 above), challenged appointment of the court-experts (see paragraphs 21 and 32 above) and asked the court to re-open the proceedings concerning exemption from the court-fees (see paragraphs 17 above). Finally, the Court notes that since 19 February 2003 the proceedings have been stayed upon a request lodged by the applicant. The Court reiterates that while the applicant is entitled to make use of his procedural rights, he must bear the consequences when it leads to delays (see, *Malicka-Wąsowska v. Poland*, (dec.), no. 41413/98, 5 April 2001). In the particular circumstances of the instant case the Court would agree with the Government's contention that the applicant significantly contributed to the length of the proceedings.

57. 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 by the applicant's former wife on 14 September 1992. The Court observes that the District Court gave on 8 January 1995 a partial decision, nevertheless, as regards the remaining part of the petitioner's claim no decision had been given yet. The Court further notes that no hearings were held between December 1994 and March 1996 as well as between May 1996 and May 1997, however, these delays were to a certain degree caused by the applicant (see paragraph 56 above). After 23 August 1999 the

District Court waited for expert opinions to be prepared and no hearings were held until at least March 2001 when the first of these opinions reached the court. Although during that time the trial court took some action, it does not explain such long delay between the hearings. In this context the Court notes that 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).

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

59. Consequently, the Court considers that a period of over eleven years, out of which ten years and seven months are taken into consideration by the Court, exceeds a reasonable time.

Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 4,654,616 Polish zloty (PLN) in respect of pecuniary and non-pecuniary damage.

62. The Government did not comment on the applicant's just satisfaction claims.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects that claim. Moreover, in the circumstances of the instant case and bearing in mind the Court's finding that the applicant significantly contributed to the length of the proceedings, the Court considers that the present judgment constitutes in itself sufficient just satisfaction for the non-pecuniary damage which the applicant might have suffered.

B. Costs and expenses

64. The applicant claimed PLN 12,612 for the costs and expenses incurred before the domestic authorities.

65. The Government again did not comment on the applicant's claims.

66. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court dismisses this claim.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any alleged non-pecuniary damage;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President