



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

FOURTH SECTION

CASE OF KRANZ v. POLAND

(Application no. 6214/02)

JUDGMENT

STRASBOURG

17 February 2004

FINAL

17/05/2004

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 Kranz v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 27 January 2004,

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

PROCEDURE

1. The case originated in an application (no. 6214/02) 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 Edmund Kranz (“the applicant”), on 29 January 2002.

2. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and subsequently Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 10 September 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. It also gave priority to application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

4. The applicant was born in 1919 and lives in Bydgoszcz, Poland.

5. On 19 July 1966 the applicant and his wife obtained a divorce decree. On 5 November 1975 the applicant's ex-wife filed with the Bydgoszcz District Court (*Sąd Rejonowy*) a petition for division of the matrimonial property. On 16 October 1978 the Bydgoszcz District Court gave a decision. Both parties appealed. On 30 May 1979 the Bydgoszcz Regional Court (*Sąd Wojewódzki*) quashed the first-instance decision and remitted the case. In

1982 the applicant's ex-wife donated her share in the disputed property to A.H. and E.H., who became parties to the proceedings.

6. On 2 December 1990 the applicant sent a letter to the Minister of Justice, complaining about the slow progress of the proceedings. On 15 February 1991, in reply to his complaints, the President of the Bydgoszcz Regional Court acknowledged that the proceedings were indeed lengthy. Prior to 1 May 1993, the Bydgoszcz District Court held a number of hearings and obtained several expert reports.

7. On 19 July 1993 the District Court held a hearing. On 5 January 1994 the applicant challenged the impartiality of the presiding judge.

8. On 29 May 1995 the District Court ordered that expert evidence be obtained. On 23 October 1995 the expert informed the court that he had been unable to prepare a report due to the applicant's conduct.

9. On 6 September and 23 October 1995 the trial court held inspections of the site.

10. On 2 October 1996 the Bydgoszcz District Court gave a decision. The court granted ownership of the entire property (plot of land and the house) to A.H. and E.H. The court also ordered them to pay off the applicant's share in the estate.

11. On 5 June 1997, on the applicant's appeal, the Bydgoszcz Regional Court partly amended the first-instance decision. On 19 September 1997 the applicant lodged a cassation appeal.

12. On 4 February 1998 A.H. and E.H. sold their share in the property to a certain J.S. On 28 April 1999 the Supreme Court (*Sąd Najwyższy*) quashed the decision of 5 June 1997 and remitted the case to the Bydgoszcz Regional Court (*Sąd Okręgowy*).

13. On 27 January 2000 the Bydgoszcz Regional Court gave a decision and remitted the case to the District Court.

14. On 20 December 2000 the Bydgoszcz District Court issued an interim order allowing the applicant to install central heating in his part of the house. On 25 June 2001, upon an appeal by J.S., the Bydgoszcz Regional Court quashed this decision.

15. On 21 January 2001 the District Court held a hearing.

16. The proceedings are pending before the Bydgoszcz District Court.

THE LAW

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

17. The applicant complained that the length of the proceedings had been 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 ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken into consideration

18. The Court first observes that the proceedings began on 5 November 1975 when the applicant's wife lodged her petition with the Bydgoszcz 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 28 years, of which period of more than 10 years and 8 months falls within the Court's jurisdiction *ratione temporis*.

19. In order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 1 May 1993 (see among other authorities, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999).

B. Admissibility

20. The Government submitted that the applicant had not exhausted all remedies available at the time of lodging his application with the Court. 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.

21. The applicant generally contested the Government's arguments.

22. The Court reiterates that Article 35 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success

(see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

23. The Court observes that the Government's objection is confined to a mere assertion that the judgment of the Constitutional Court created a new remedy and the applicant must have been aware of its availability. No further information as to any juridical practice relating thereto has been provided. In the absence of such evidence and having regard to the above-mentioned principle, the Court finds that the Government have failed to substantiate their contention that the remedy at issue is an effective one (see *Malasiewicz v. Poland*, no. 22072/02, § 32, 14 October 2003; *Skawińska v Poland* (dec), no. 42096/98, 4 March 2003).

24. 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 *D.M. v. Poland*, no. 13557/02, §§ 47-50, 14 October 2003; *Kudła v. Poland* [GC], no. 30210/96, § 160, ECHR 2000-XI).

25. For these reasons, the Court finds that the application cannot be rejected for non-exhaustion of domestic remedies. It further notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. The Court will therefore declare the case admissible.

C. Merits

1. *The applicant's submissions*

26. The applicant submitted that the proceedings in his case had lasted more than 28 years. He further argued the overall length of the proceedings could not be justified by their complexity.

27. He also claimed that he had not contributed to the length of the proceedings.

28. Lastly, the applicant maintained that the excessive length of the proceedings had put a severe strain on him, in view of his great age (84 years).

2. *The Government's submissions.*

29. The Government submitted that the case was complex. In this respect they stressed that the courts needed to obtain several expert reports.

30. They were of the view that the applicant contributed to the conduct of the proceedings, since he had submitted numerous motions to the trial court. He further on one occasion challenged the impartiality of the presiding judge and contested the expert's report.

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

32. 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*

33. 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* cited above, § 60).

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

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

36. As to the conduct of the authorities, the Court first notes that there was a significant delay of nearly two years, i.e. between 19 July 1993 and 29 May 1995, when the court remained entirely passive (see paragraphs 7 and 8 above). It further observes that there was a delay of one year, i.e. between 23 October 1995 and 2 October 1996, when no hearing was held (see paragraphs 9 and 10). The Court considers that the Government's observations do not explain these delays.

37. Consequently, having regard to the circumstances of the case and taking into account the overall duration of the proceedings, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 40,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

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

42. As regards the alleged pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage claimed was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making award to him under that head (see, *mutatis mutandis*, *Kudla v. Poland* [GC], no 30210/96, § 164, ECHR 2000-XI).

43. 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 5,000 euros ("EUR") under that head.

B. Costs and expenses

44. The applicant did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

C. Default interest

45. 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 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 5,000 (five thousand euros) in respect of non-pecuniary damage 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 amount;

(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 17 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President