



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

FOURTH SECTION

CASE OF KASZUBSKI v. POLAND

(Application no. 35577/97)

JUDGMENT

STRASBOURG

24 February 2004

FINAL

07/07/2004

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

Having deliberated in private on 3 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 35577/97) 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 Jerzy Kaszubski ("the applicant"), on 10 November 1995.

2. The applicant, who had been granted legal aid, was represented by Mr A. Redelbach, a lawyer practising in Poznań. The Polish Government ("the Government") were represented by their Agent, Mr. K. Drzewicki and subsequently Mrs S. Jaczewska, of the Ministry of Foreign Affairs.

3. The applicant alleged in particular that his case had not been heard within a reasonable time in breach of Article 6 § 1 of the Convention.

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 Third 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 November 2002, the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1948 and lives in Pobiedziska, Poland.

9. On 11 October 1978 the applicant and the Pobiedziska Municipal Cooperative, “Samopomoc Chłopska”, entered into a contract under which the cooperative was to install central heating, electrical, water and sewage systems in the applicant’s house. Under the terms of the contract, the contractor was to complete these works by 30 May 1979, but it failed to meet that deadline.

The applicant on two occasions sued the cooperative seeking payment of damages for the defects in the works carried out under the contract. The proceedings were terminated on 1 June 1993 and 5 December 1994, respectively.

10. On 4 November 1995 the applicant, for the third time, sued the cooperative in the Gniezno District Court (*Sąd Rejonowy*) seeking 10,000 PLN in damages. The applicant asked the court to exempt him from the court fees and grant him legal assistance. On 24 November 1995 he asked the court to order the defendant to secure the claim by an unspecified guarantee.

11. On 13 December 1995 the Gniezno District Court refused to exempt the applicant from the court fees. On 29 January 1996, on the applicant’s further appeal, the Gniezno District Court exempted him from the court fees and appointed a legal aid counsel for him.

12. On 1 April 1996 the Gniezno District Court dismissed the applicant’s motion to secure the claim, as he had failed to submit the required information (numbers of land and mortgage registers).

13. At the hearing on 18 July 1996 the court obliged the applicant’s lawyer to specify within a time-limit of 20 days the damages sought on pain of staying the proceedings. As the applicant’s lawyer failed to comply with this order, the court stayed the proceedings on 12 August 1996. The applicant appealed. On 15 November 1996 the Poznań Regional Court (*Sąd Wojewódzki*) quashed the decision of 12 August 1996 and resumed the proceedings.

14. Subsequently, the applicant submitted the required information. On 28 April 1997 the Gniezno District Court secured the applicant’s claim. On 22 September 1997, upon the defendant’s further appeal, the Poznań Regional Court quashed that decision and remitted the case. On 18 December 1997 the Gniezno District Court dismissed the applicant’s motion to secure the claim.

15. On 19 December 1997 the applicant increased the amount of damages claimed (to 100,000 PLN). Consequently, the Gniezno District

Court no longer had jurisdiction over the subject matter and the case was referred to the Poznań Regional Court.

16. On 29 January 1998 the Minister of Justice informed the applicant that the proceedings would be supervised by the President of the Poznań Regional Court.

17. On 2 September 1998 the applicant lodged a further application for his claim to be secured. On 3 September 1998 the Poznań Regional Court dismissed his application and stayed the proceedings. The applicant appealed on 14 September 1998. On 13 November 1998 the Poznań Court of Appeal dismissed his appeal. On 29 December 1998, the applicant again asked the court to secure the claim. On 22 January 1999 the Regional Court dismissed his appeal on the ground that the applicant had not yet substantiated his claim.

18. On 5 March 1999 the trial court resumed the proceedings. Subsequently, on 2 April 1999 the applicant was exempted from court fees. On 10 May 1999 he was granted legal aid.

19. In his letter of 28 May 2003 the applicant informed the Court that the proceedings were still pending before the Poznań Regional Court.

20. On 10 September 2003 the Poznań Regional Court gave judgment.

21. On 3 December 2003 the applicant lodged an appeal against this judgment. It appears that the proceedings are pending before the Poznań Court of Appeal.

THE LAW

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

22. The applicant 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 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...”

23. The Government contested this view.

A. Period to be taken into consideration

24. The Court observes that the period to be taken into consideration began on 4 November 1995, when the applicant lodged his claim with the Gniezno District Court. In the light of the material available to the Court at the date of the adoption of the present judgment, the proceedings have not

yet ended. Their length has accordingly amounted to more than 8 years and 3 months.

B. Reasonableness of the length of the proceedings

1. The applicant's submissions

25. The applicant submitted that the proceedings in his case had lasted excessively long.

26. He further maintained that the overall length of the proceedings could not be justified by the complexity of the case.

27. Lastly, he stressed that the excessive length of the proceedings had put a severe strain on him in view of his disabilities.

2. The Government's submissions

28. The Government argued that the case had been of a certain complexity.

29. They further claimed that the applicant had contributed to the excessive length of the proceedings, as he had failed to comply with the court's decisions of 18 July and 15 November 1996.

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 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).

32. The Court considers that even though the case involved a certain degree of complexity, it cannot be said that this in itself justified the length of the proceedings.

33. 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.

34. As regards the conduct of the authorities, the Court considers that the Government's observations do not explain the delays in the proceedings.

35. 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.

36. There has accordingly 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 20,000 Polish zlotys (approx. 4,300 euros) by way of compensation for non-pecuniary damage which he had suffered as a result of the protracted length of the proceedings.

39. The Government submitted that the applicant’s claim was exorbitant and asked the Court to rule that the finding of a violation would constitute sufficient just satisfaction.

40. The Court considers that the applicant certainly suffered damage of a 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 4,300 euros (“EUR”).

B. Costs and expenses

41. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case in the proceedings before the Court, did not seek extra reimbursement of costs and expenses involved in the proceedings before the Court.

C. Default interest

42. 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. *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, EUR 4,300 (four thousand three hundred euros) in respect of non-pecuniary damage to be converted into Polish zlotys 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.

Done in English, and notified in writing on 24 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President