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

FOURTH SECTION

CASE OF HULEWICZ v. POLAND

(Application no. 35656/97)

JUDGMENT

STRASBOURG

30 March 2004

FINAL

30/06/2004

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 Hulewicz 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 R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,

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

Having deliberated in private on 9 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 35656/97) 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, Mrs Jadwiga Hulewicz ("the applicant"), on 10 June 1996.

2. The applicant was represented by Mrs M. Zawitkowska, a lawyer practising in Słupsk, Poland. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that her 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 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 12 November 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 1952 and lives in Lębork, Poland.

9. On 23 May 1990 the applicant acquired the right to a long-term lease of a flat (*spółdzielcze lokatorskie prawo do lokalu*) in a building owned by the Lębork Housing Co-operative (*Spółdzielnia Mieszkaniowa*).

10. On 22 July 1993 the co-operative sued the applicant in the Lębork District Court (*Sąd Rejonowy*), seeking payment. On 25 October 1993 the court gave judgment and granted the claim. The applicant appealed against this judgment. On 19 January 1994 the Słupsk Regional Court (*Sąd Wojewódzki*) amended the first-instance judgment.

11. Subsequently, the applicant twice requested the Minister of Justice to grant her leave to file an extraordinary appeal with the Supreme Court (*Sąd Najwyższy*). Her first request was rejected on 10 October 1994.

12. On 31 January 1997, upon the applicant's second request, the Minister of Justice filed a cassation appeal on the applicant's behalf, contesting the judgment of the Słupsk Regional Court of 19 January 1994.

13. On 29 April 1997 the Supreme Court quashed both judgments given in the applicant's case and remitted the case to the court of first instance. It held that the lower courts had committed serious errors of fact and law.

14. On 28 October 1997 the Lębork District Court joined the applicant's case with similar proceedings against seven other members of the co-operative.

15. On 19 March 1998 the court held a hearing.

16. On 8 May 1998 the court ordered that expert evidence be obtained.

17. On 9 June 1998 the court exempted the applicant from half of the court fees due. The applicant appealed. On 29 December 1998 the Słupsk Regional Court rejected her appeal.

18. On 29 February 2000 the trial court ordered that further expert evidence be obtained. On 19 May 2000 the expert submitted his report to the court. On 4 October 2000 the applicant challenged the expert's opinion of 19 May 2000.

19. On 5 October 2000 the court held a hearing and listed the next hearing for 17 October 2000.

20. On 1 March 2002 the District Court gave judgment. On 8 April 2002 the applicant appealed against this judgment.

21. It appears that the proceedings are pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22. The applicant complained that the length of the proceedings in her case had 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. In its admissibility decision of 12 November 2002 in the present case, the Court accepted that the starting point for determining the length of the proceedings is 31 January 1997, the date on which the Minister of Justice filed a cassation appeal on the applicant's behalf. 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. They have therefore already lasted more than 7 years.

B. Reasonableness of the length of the proceedings

1. The applicant's submissions

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

26. She further argued that the case had not been complex.

27. She also stressed that there had been several periods of inactivity and that the trial court had failed to handle her case with due diligence.

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

2. The Government's submissions

29. The Government submitted that the case had been complex as it necessitated the taking of expert evidence. Moreover, they stressed that eight defendants had been involved in the proceedings.

30. They further agreed that the applicant had not significantly contributed to the length of the proceedings.

31. As to the conduct of the relevant authorities the Government contended that they 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 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).

34. The Court considers that even though the case involved a certain degree of complexity, 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 she has significantly contributed to the prolongation of the trial.

36. As to the conduct of the authorities, the Court considers that they were responsible for delays in the process of obtaining expert evidence i.e. between 19 March 1998 and 19 May 2000 (see paragraphs 16-18 above). Moreover, following the remittal of the case the trial court held only three hearings on the merits.

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 has not been 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 sought an award of 3,500 Polish zlotys in respect of pecuniary damage. She further claimed the sum of 30,000 Polish zlotys for damage that she had suffered as a result of the protracted length of the proceedings.

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

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

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 EUR 3,500 (three thousand five hundred euros) under that head.

B. Costs and expenses

43. The applicant also claimed 14,120 Polish zlotys for fees and costs in the preparation and presentation of her case before the Convention institutions.

44. The Government invited the Court to make an award, if any, only in so far as the costs and expenses 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. 14, § 36).

45. The Court has assessed the claim in the light of the principles laid down in its case-law (*Kudla v. Poland* judgment cited above, § 168). Applying the said criteria to the present case and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 1,500 euros (one thousand five hundred euros) for her costs and expenses together with any value-added tax that may be chargeable

C. Default interest

46. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which three percentage points should be added.

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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of the settlement, together with 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;

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

Done in English, and notified in writing on 30 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President