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

FOURTH SECTION

CASE OF KRZAK v. POLAND

(Application no. 51515/99)

JUDGMENT

STRASBOURG

6 April 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 Krzak 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 16 March 2004,

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

PROCEDURE

1. The case originated in application no. 51515/99 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 two Polish nationals, Mr Stanisław Krzak ("the first applicant") and Mrs Anna Krzak ("the second applicant"), on 14 December 1998.

2. 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 applicants alleged, in particular, that their right to a "hearing within a reasonable time" had not been respected.

4. On 3 July 2001 the Third Section decided to communicate the application 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.

5. 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).

THE FACTS

6. The applicants, Stanisław Krzak and Anna Krzak, a married couple, are Polish nationals. They were both born in 1921 and live in Sławnowice, Poland.

I. CIVIL PROCEEDINGS

7. On 17 May 1988 W.Ł. ("the petitioner") filed an application with the Żywiec District Court (*Sąd Rejonowy*), seeking a decision declaring that she had acquired a title to certain real property. The first applicant was one of the parties to the proceedings.

8. On 23 April 1991 the Żywiec District Court gave a decision. It declared that W.Ł. and her husband M.Ł. had acquired the title to the property which consisted of four plots of land. The first applicant appealed against that decision.

9. On 22 October 1993 the Bielsko-Biała Regional Court (*Sąd Wojewódzki*) set aside the first-instance decision and remitted the case in respect of one of the plots. It dismissed the remainder of the first applicant's appeal.

10. The hearing listed for 10 January 1994 was adjourned since the first applicant had been improperly summoned.

11. On 7 February 1994 the court held a hearing. The first applicant was not present. At the next hearing, held on 18 March 1994, the court stayed the proceedings due to the death of M.K., one of the participants in the proceedings. On 29 August 1994 the court held hearing and resumed the proceedings. The hearing fixed for 11 October 1994 was adjourned at the petitioner's request. The trial court held further hearings on 18 July, 6 September, and 6 October 1995.

12. On 19 October 1995 the court held a hearing. The first applicant failed to appear. The next hearing took place on 29 November 1995.

13. On 5 December 1995 the Żywiec District Court gave a decision (*postanowienie*). It held that W.Ł. and M.Ł. had acquired the title to the property in question.

14. On 15 March 1996 the first applicant asked for leave to file an appeal out of time. He claimed that he had been sick and he had not been able to lodge an appeal against the final decision within the prescribed time limit.

15. On 18 September 1996 the Żywiec District Court held a hearing in the appeal proceedings. At a further hearing held on 25 October 1996, the District Court dismissed the applicant's appeal of 15 March 1996.

16. Later, on an unknown date, the first applicant asked the Minister of Justice for leave to file a cassation appeal with the Supreme Court (*Sąd Najwyższy*) against the above-mentioned decisions of the Żywiec District

Court. On 23 June 1998 the Minister of Justice lodged a cassation appeal on the first applicant's behalf.

17. On 8 October 1998 the Supreme Court quashed the decisions of the Żywiec District Court of 23 April 1991 and 5 December 1995 and remitted the case. It found that the District Court had not summoned all the parties to the proceedings.

18. On 9 February 1999 the Żywiec District Court held a hearing. It ordered W.Ł. to produce certain documents. On 16 March 1999 the court stayed the proceedings because W.Ł. had failed to comply with that order. On 25 June 1999 the Bielsko-Biała Regional Court dismissed the first applicant's appeal against that decision.

19. On 26 July 1999 the Żywiec District Court dismissed the first applicant's further appeal against the decision of 25 June 1999.

20. In a letter of 9 December 2003 the applicants informed the Court that the proceedings are still pending before the Żywiec District Court.

II. CRIMINAL PROCEEDINGS

21. In 1991 the applicants requested the Żywiec District Prosecutor (*Prokurator Rejonowy*) to institute criminal proceedings against J.K. and W.K., complaining that the latter had destroyed their house and stolen their trees. On 30 September 1992 Żywiec District Prosecutor discontinued the investigation against the alleged culprits. On 15 March 1993 the Bielsko-Biała Regional Prosecutor (*Prokurator Wojewódzki*) upheld this decision.

22. In 1994, following the applicants' complaint to the Minister of Justice, the Żywiec District Prosecutor reopened the investigation. On 15 February 1995 the District Prosecutor again discontinued the investigation considering that no criminal offence had been committed. The applicants subsequently complained to the Minister of Justice about that decision.

THE LAW

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

A. The complaint about refusal to institute criminal proceedings

23. The applicants complained about the prosecution authorities' refusal to institute criminal proceedings against the alleged culprits. The complaint falls to be examined under Article 6.

1. Admissibility

24. The Court reiterates that the Convention does not guarantee a right to have criminal proceedings instituted against third persons or to have such persons convicted (see R.D. v. Poland, nos. 29692/96 and 34612/97, Commission decision of 22 October 1997, unpublished)

25. It follows that this part of the application is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

B. The complaint about the length of the proceedings

26. The applicants complained that the length of the proceedings was 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..."

1. Period to be taken into consideration

27. The Government submitted that the present proceedings had in fact constituted two separate sets. The first set began on 17 May 1988, when W.L., the petitioner, filed an application with the Żywiec District Court and had come to an end on 5 December 1995, when the Żywiec District Court had given a final decision. The second set began on 23 June 1998, when the Minister of Justice lodged a cassation appeal on the applicants' behalf.

28. The Court considers in these circumstances, that the starting point for determining the length of the proceedings is the date on which the cassation appeal was filed i.e 23 June 1998 (see, *Hulewicz v. Poland* (dec.) no. 35656/97, 12 November 2002). In the light of the material available to the Court at the date of the adoption of the present judgment, the

proceedings are still stayed and thus pending. Their length has accordingly amounted to more than 5 years and 8 months.

2. Admissibility

29. The Court notes at the outset that the second applicant was not a party to the proceedings in question. In these circumstances, the Court considers that she cannot claim to be a victim within the meaning of Article 34 of the Convention in respect of these proceedings.

It follows that the second applicant's complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

30. As regards the first applicant, the Court considers that his 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. It must therefore be declared admissible.

3. Merits

(a) The Government's submissions

31. The Government submitted that the case was complex as it necessitated the taking of evidence from a number of witnesses. They further stressed that the courts needed to obtain several expert reports.

32. They further maintained that the first applicant had contributed to the prolongation of the proceedings as he had failed to produce the necessary evidence and on numerous occasions had not attended the hearings. They contended that the authorities had shown due diligence in the course of the proceedings. However, they admitted that after 16 March 1999, there had been little activity on the part of the court.

33. The Government finally argued that what was at stake for the applicant was solely of a pecuniary nature. Thus, special diligence was not required of the authorities in the present case.

34. In conclusion, the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

(b) The applicant's submissions

35. The first applicant generally disagreed with the Government. He further maintained that his case had not been complex.

36. The applicant stressed that the excessive length of the proceedings had put a severe strain on him, in particular in view of his great age (82 years) and disabilities.

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

(c) The Court's assessment

38. 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 applicants 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* [GC], no. 26614/95, § 60, 15 October 1999).

39. The Court considers that the case was not particularly difficult to determine.

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

41. As to the conduct of the authorities, the Court observes that after 26 July 1999 the trial court remained entirely passive (see paragraphs 19, 20 above). It further considers that the Government's observations do not explain this delay.

42. Lastly, the Court considers that what was at stake in the litigation in issue was undoubtedly of crucial importance to the applicants, taking into consideration their great age.

43. The foregoing considerations are sufficient to enable the Court to conclude that the first applicant's case was not heard within a reasonable time.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The first applicant sought an award of 500,000 Polish zlotys (approx. 106,000 euros) in respect of pecuniary damage. Under the head of non-pecuniary damage he claimed a sum of 200,520 Polish zlotys (approx. 42,660 euros).

47. The Government did not comment on the applicant's claim.

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

49. The Court further considers that the first 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 first applicant a total sum of 3,500 euros ("EUR") under that head.

B. Costs and expenses

50. The applicant also claimed 12,774 Polish zlotys for the costs and expenses incurred before the domestic courts.

51. The Government did not comment on the applicant's claim.

52. 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 rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

53. 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 first applicant's complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;

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 first 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 to be converted into the national currency of the respondent State 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 6 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE Nicolas BRATZA
Registrar President