



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

FOURTH SECTION

CASE OF KRZEWICKI v. POLAND

(Application no. 37770/97)

JUDGMENT

STRASBOURG

27 April 2004

FINAL

27/07/2004

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 Krzewicki 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. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

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

Having deliberated in private on 23 March 2004

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

PROCEDURE

1. The case originated in an application (no. 37770/97) 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, Andrzej Krzewicki ("the applicant"), on 19 July 1997.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki and subsequently Mr. Jakub Wołásiewicz 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 12 November 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1952 and lives in Łódź, Poland.

9. On 31 July 1992 the applicant sued the “Bolesławów” Agriculture Co-operative (*Rolnicza Spółdzielnia Przetwórstwa Owoców i Warzyw “Bolesławów”*) in the Łódź Regional Court (*Sąd Wojewódzki*), seeking repayment of his indexed membership shares (*udziały członkowskie*).

10. On 29 April 1993 the applicant asked the court to list a hearing. On 21 September 1993 the court held the first hearing and requested the applicant to submit certain documents. On 25 September 1993 the applicant submitted to the court his pleadings together with the relevant documents.

11. On 17 May 1994 the court held the second hearing. It ordered an accountant of the co-operative to provide information about the management of the co-operative's assets. The documents were submitted to the court on 1 October 1994.

12. The third hearing was held on 23 March 1995. On 4 May 1995 the applicant requested that the court issue an interim order (*zarządzenie tymczasowe*) and restrain the co-operative from selling or encumbering its property in order to safeguard his claim. On 5 July 1995 the court refused to issue the interim order. The applicant appealed against this decision. On 7 September 1995 the Łódź Court of Appeal (*Sąd Apelacyjny*) upheld the first-instance decision.

13. On 16 November 1995 the Regional Court held the fourth hearing. The accountant of the co-operative summoned as a witness failed to appear due to illness.

14. The next hearing, listed for 16 April 1996, was adjourned on the ground that the presiding judge was ill.

15. On 20 April 1996 the applicant complained, invoking Article 6 of the Convention, about the length of the proceedings to the President of the Łódź Regional Court. On 30 April 1996 the President of the Regional Court instructed the President of the Civil Division of the Regional Court to list a hearing in the case. On 24 May 1996 the President of the Court of Appeal, informed the applicant that he would supervise the proceedings.

16. On 18 June 1996 the court held the fifth hearing. The accountant summoned as a witness again failed to appear. The court adjourned the hearing until 22 October 1996. In addition the court ordered the defendant to submit certain documentary evidence.

17. On 24 June 1996 the applicant complained for the second time to the President of the Regional Court about the delay in the proceedings. He also sent a letter to the President of the Court of Appeal. In reply, the President

of the Court of Appeal informed the applicant that it was not possible to schedule a hearing before 22 October 1996.

18. In the meantime the case was assigned to a new judge. On 24 September 1996 the court held a hearing. The hearing scheduled for 22 October 1996 was adjourned due to the presiding judge's illness.

19. On 28 February 1997 the court held the last (seventh) hearing. According to the applicant's submissions, the court invited him to settle the case. On the same date the parties reached a friendly settlement and the court discontinued the proceedings. The applicant did not appeal against that decision.

THE LAW

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

20. 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...”

21. The Government contested this view.

A. Period to be taken into consideration

22. The Court first observes that the proceedings began on 31 July 1992 when the applicant lodged his claim with the Łódź Regional 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. The proceedings ended on 28 February 1997. Their length has accordingly amounted to nearly 4 years and 7 months, of which a period of almost 3 years and 10 months falls within the Court's jurisdiction *ratione temporis*.

23. 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. Reasonableness

1. The Government's submissions

24. The Government submitted that the case had been rather complex as it necessitated the taking of expert opinions. The trial court also had to hear evidence from several witnesses.

25. They further claimed that the domestic authorities had shown due diligence in dealing with the applicant's claim. However, they acknowledged that there had been some periods of inactivity in the proceedings.

26. The Government admitted that the applicant had not contributed to the length of the proceedings.

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

2. The applicant's submissions

28. The applicant generally disagreed with the Government's submissions.

29. He claimed that the domestic court had failed to act with due diligence. In particular there were long intervals between the hearings. Moreover, his applications for the proceedings to be accelerated had been to no effect.

30. Referring to what was at stake for him in the proceedings, the applicant stressed that due to the protracted length of the proceedings he had been forced to settle the case on unfavourable terms.

31. Lastly, he maintained that he had not contributed to the length of the proceedings.

32. In conclusion he asked the Court to find a 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*, § 60 cited above).

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 total length of the proceedings.

35. As regards the conduct of the applicant, the Court observes that the Government acknowledged that the applicant had not in any way contributed to the length of the proceedings (see paragraph 26 above).

36. As to the conduct of the national authorities the Court notes that there were periods of inactivity during the proceedings. The trial court held only seven hearings with significant intervals between them (the majority exceeded eight months).

37. Consequently, having regard to the circumstances of the case, 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 sought an award of 14,949 Polish zlotys under the head of pecuniary and non-pecuniary damage.

41. The Government contended that there is no causal link between the alleged violation and the pecuniary and non-pecuniary damage claimed.

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 him under that head (see, *mutatis mutandis Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

43. The Court considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration on account of 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 2,400 euros (“EUR”) under that head.

B. Costs and expenses

44. The applicants did not seek to be reimbursed for any costs or 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. *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 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at a 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President