



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

FOURTH SECTION

CASE OF GÓRA v. POLAND

(Application no. 38811/97)

JUDGMENT

STRASBOURG

27 April 2004

FINAL

10/11/2004

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 Góra 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 30 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 38811/97) 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, Stanislaw Góra ("the applicant"), on 12 December 1996.

2. The Polish Government ("the Government") were represented by their Agents, Mr Krzysztof Drzewicki and subsequently Mr Jakub Wołosiewicz.

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 19 November 2002 the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1946 and lives in Szamotuły, Poland.

A. Proceedings concerning the action for damages against the Wielkopolska Gardening Co-operative and Polcomex Ltd.

9. On 30 July 1987 the applicant lodged a claim for payment against the Wielkopolska Gardening Co-operative (*Wielkopolska Spółdzielnia Ogrodnicza*) with the Poznań District Court (*Sąd Rejonowy*). On 3 November 1987 the Polcomex Ltd joined the proceedings as a second defendant. Prior to 1 May 1993 the trial court held several hearings and ordered an opinion from an expert.

10. On 30 December 1993 the applicant modified his claim and applied for an exemption from court fees. At the hearing held on 21 February 1994 the court ordered the applicant to pay the court fees due for the submission of the modified claim.

11. On 28 February 1994 the applicant again asked the court to exempt him from court fees. On 28 March 1994 the Poznań District Court rejected his application. On 1 April 1994 the applicant appealed against that decision. On 30 September 1994 the Poznań Regional Court (*Sąd Wojewódzki*) dismissed his appeal.

12. On 8 November 1994 the applicant paid the required court fees.

13. On 7 January 1995 the applicant modified his claim for the second time. On 8 February 1995 the District Court partly exempted him from the court fees.

14. On 8 March 1995 the District Court held a hearing. On 28 May 1995 the applicant modified his claim for the third time.

15. On 12 February 1997 the court ordered that expert evidence be obtained. The expert opinion was completed on 19 May 1997 and submitted to the court. On 2 July 1997 the court ordered that a new expert opinion be obtained.

16. At the hearing held on 30 December 1997 the applicant finally specified his claim.

17. On 21 January 1998 the Poznań District Court gave judgment. On 18 March 1998 the applicant lodged an appeal with the Poznań Regional Court. On 10 July 1998 the Poznań Regional Court quashed the first-instance judgment and remitted the case.

18. On 5 July 2000 the Poznań District Court gave judgment. On 21 October 2000 the applicant appealed. He also applied for an exemption

from court fees. On 4 January 2001 the District Court rejected his application. On 26 January 2001 the applicant paid the required court fees.

19. On 14 December 2001 the Poznań Regional Court gave judgment. The judgment is final.

B. Proceedings for compensation against the Szczuczyn Agricultural Co-operative

20. On 22 September 1988 the applicant sued the Szczuczyn Agricultural Co-operative (*Rolniczy Kombinat Spółdzielczy*) in the Poznań Regional Court, seeking compensation. Prior to 1 May 1993 the court ordered opinions from two experts.

21. On 7 July 1993 the Poznań Regional Court rejected the applicant's request for an exemption from court fees. On 8 October 1993 the Poznań Court of Appeal (*Sąd Apelacyjny*) upheld this decision.

22. On 6 November 1993 the Regional Court ordered the applicant to pay half of the court fees due.

23. On 21 March 1994 the applicant challenged the impartiality of the judges of the Poznań Regional Court. On 25 May 1994 the Supreme Court (*Sąd Najwyższy*) referred the challenge to the Poznań Regional Court.

24. On 8 November 1994 the Regional Court held a hearing. It granted the applicant a general exemption from court fees.

25. On 4 February 1995 the applicant modified his claim. At the hearing held on 1 December 1995 the court ordered that an expert opinion be obtained.

26. On 13 and on 18 December 1995 respectively the co-operative and the applicant requested that certain witnesses be summoned.

27. Subsequently, two experts refused to prepare their opinions. On an unspecified date the court ordered that the Sielinko Centre for Agricultural Assistance (*Ośrodek Doradztwa Rolniczego Sielinko*) prepare an expert opinion. On 1 August 1997 the opinion was submitted to the court.

28. On 2 July 1997 the applicant complained to the President of the Poznań Regional Court about the delay in the proceedings. In reply, the President admitted that the applicant's complaint was justified.

29. On 4 August 1997 the court fixed a hearing for 5 November 1997. It was subsequently cancelled. The court held further hearings on 21 November 1997, 27 March and 13 October 1998.

30. On 27 October 1998 the Regional Court gave judgment. The applicant appealed. On 11 June 1999 the Court of Appeal dismissed the applicant's appeal. On 27 October 1999 the applicant lodged a cassation appeal against the final judgment. On 14 November 2001 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant's cassation appeal as manifestly ill-founded.

C. Proceedings concerning a claim for payment against the Szamotuły Agricultural Co-operative

31. On 22 August 1988 the applicant sued the Szamotuły Agricultural Co-operative (*Spółdzielnia Kółek Rolniczych*) in the Poznań Regional Court, seeking damages. On 22 December 1992 the Regional Court gave judgment.

32. On 31 August 1993 the Poznań Court of Appeal, upon the parties' appeals, remitted the case to the Szamotuły District Court. It ordered the District Court to determine the amount of compensation to be granted to the applicant.

33. The applicant modified his claim on 30 November 1993 and 17 May 1994 respectively.

34. On 28 September 1994 the District Court ordered that an expert opinion be obtained.

35. On 14 July 1995 the applicant challenged the impartiality of the presiding judge. On 28 July 1995 the District Court rejected his challenge as unfounded. On 30 January 1996 the Poznań Regional Court upheld the first-instance decision. However, the case was subsequently assigned to another judge.

36. On 3 February 1997 the court ordered that a new expert opinion be obtained. The relevant expert report was submitted on 20 March 1997.

37. On 31 October 1997 the District Court gave judgment. On 29 December 1997 the applicant lodged an appeal with the Regional Court. On 12 May 1998 the Regional Court dismissed his appeal.

38. On 31 August 1998 the applicant lodged a cassation appeal against the final judgment with the Supreme Court. On 16 October 1998 the Poznań Regional Court rejected the cassation appeal as inadmissible in law. The applicant appealed. On 19 April 1999 the Supreme Court dismissed his appeal.

THE LAW

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

39. The applicant complained that the length of all three sets of the proceedings 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. “

40. The Government contested this view.

41. The Court reiterates that the reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference 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 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, 15 October 1999, § 60).

42. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see, among other authorities *Humen v. Poland*, §§ 58-59, cited above)

A. Proceedings concerning the action for damages against the Wielkopolska Gardening Co-operative and Polcomex Ltd

1. The parties' submissions

43. The Government submitted that the proceedings had been particularly complex as they had necessitated the taking of expert evidence. They further maintained that the authorities had shown due diligence in handling the applicant's case. However, they also acknowledged that there had been some periods of inactivity on the part of the authorities after 1 May 1993. In the Government's opinion the applicant contributed substantially to the prolongation of the trial. In the conclusion they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

44. The applicant generally disagreed with the Government's submissions that the case had been complex. He further claimed that he had had to modify his claim as a result of the high inflation rate. In the end, he asked the Court to find a violation of Article 6 § 1 of the Convention.

2. The Court's assessment

45. The proceedings began on 30 July 1987 when the applicant lodged his claim with the Poznań District Court and ended on 12 December 2001. Their length has accordingly amounted to more than 14 years and 4 months, of which period of over 8 years and 7 months falls within the Court's jurisdiction *ratione temporis*.

46. The Court observes that there were delays in the proceedings which resulted from the slow process of obtaining evidence. There was a substantial period of inactivity i.e. between 1 December 1995 and 21 November 1997 (see paragraphs 14, 15 above).

47. The Court further notes that although the applicant could be held responsible for certain delays in the proceedings, it does not appear that he had significantly contributed to the overall length of the proceedings. Regard must also be had to the high inflation rate in Poland which justified successive modifications of the applicant's claim.

48. Consequently, the Court concludes that a period of over fourteen years and four months, out of which eight years and seven months are taken into consideration by the Court, exceeds a reasonable time.

49. There has therefore been a violation of Article 6 § 1 of the Convention.

B. Proceedings for compensation against the Szczuczyn Agricultural Co-operative

1. The parties' submissions

50. The Government pointed out that the case had been complex. In order to assess the damages suffered by the applicant the domestic courts had recourse to no less than three expert opinions. They further submitted that the authorities had shown due diligence in the case. Hearings had been scheduled regularly. The prolongation of the trial resulted from the delays in obtaining expert opinions. Lastly, they claimed that the applicant significantly contributed to the length of the proceedings as he lodged several motions with the trial court.

51. The applicant disagreed with the Government's submissions. He claimed that the proceedings had not been complex. He further maintained that the facts of the case did not confirm the Government's opinion that the judicial authorities had shown due diligence in ensuring the proper course of the proceedings.

2. The Court's assessment

52. The proceedings began on 22 September 1988 when the applicant lodged his claim with the Poznań District Court and ended on 14 November 2001. Their length accordingly amounted to nearly 13 years and 2 months, of which the period of over 8 years and 6 months falls within the Court's jurisdiction *ratione temporis*.

53. The Court observes that the case involved a certain degree of complexity on account of the need to obtain expert evidence. However, the assessment of the amount of compensation to be made to the applicant cannot be regarded as a particularly complex issue.

54. As regards the conduct of the applicant the Court observes that it does not appear that the way he exercised his procedural rights significantly contributed to the length of the proceedings.

55. With respect to the conduct of the national authorities the Court, considers that the authorities were responsible for delays in the process of obtaining expert evidence (see paragraphs 25, 27).

56. Consequently, having regard to 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.

57. There has therefore been a violation of Article 6 § 1 of the Convention

C. Proceedings concerning a claim for payment against the Szamotulý Agricultural Co-operative

1. The parties' submissions

58. The Government submitted that the case had been complex. The trial court had to obtain opinions from four experts. They further claimed that the domestic authorities had shown due diligence. The only delays in the proceedings resulted from the process of obtaining expert evidence. Lastly, they argued that the applicant had contributed to the length of the proceedings by submitting several procedural appeals to the trial court. In the conclusion the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

59. The applicant stressed that the proceedings had lasted excessively long. He further maintained that the circumstances of the case had been clear and there had been no need to obtain expert evidence.

2. The Court's assessment

60. The proceedings began on 22 August 1988 when the applicant lodged his claim with the Poznań District Court and ended on 12 May 1998. Their length has accordingly amounted to nearly 9 years and 9 months, of which the period of over 5 years falls within the Court's jurisdiction *ratione temporis*.

61. The Court considers that the case involved a certain degree of complexity. However, the overall length of the proceedings cannot be explained by their complexity.

62. As regards the applicant's conduct, even if he can be considered responsible for certain delays (see paragraph 35 above), this in itself cannot justify the total duration of the proceedings.

63. As to the conduct of the national authorities the Court notes that there were some periods of inactivity in the proceedings i.e. between 30 January 1996 and 3 February 1997 (see paragraphs 35, 36 above).

64. Having regard to the circumstances of the case as a whole, 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant sought an award of 234,183 Polish zlotys in respect of pecuniary damage. He further claimed the sum of 100,000 Polish zlotys for non-pecuniary damage he had suffered as a result of the protracted length of the proceedings.

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

69. 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*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

70. 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 7,000 euros (EUR) under that head.

B. Costs and expenses

71. The applicant also claimed 5,000 Polish zlotys for the costs and expenses incurred before the domestic courts.

72. The Government did not comment on the applicants' claim.

73. 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

74. 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 7,000 (seven 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;
 - (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