



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

FOURTH SECTION

CASE OF GEŚIARZ v. POLAND

(Application no. 9446/02)

JUDGMENT

STRASBOURG

18 May 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 Gęsiarz 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 27 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 9446/02) 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 a Polish national, Mr Jan Gęsiarz ("the applicant"), on 16 February 2002.

2. The Polish Government ("the Government") were represented by their Agents, Ms S. Jaczewska, and subsequently, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 8 July 2003 the President of the Fourth Section decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility. The President of the Chamber further gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

4. The applicant was born in 1933 and lives in Częstochowa, Poland.

A. Facts prior to 1 May 1993

5. The applicant shared a house and a plot of land with three family members ("the neighbours"). On 6 February 1989 he instituted non-contentious proceedings (*postępowanie nieprocesowe*) before the

Częstochowa District Court (*Sąd Rejonowy w Częstochowie*) in which he requested that the co-ownership of the property be dissolved.

6. Until November 1991 the court held eight hearings and ordered two expert opinions.

7. On 30 April 1992 the court stayed the proceedings because the applicant had failed to pay an advance fee towards the costs of an expert opinion.

B. Facts after 30 April 1993

8. On 22 September 1994 the proceedings were resumed as the applicant paid the costs ordered by the court.

9. On 6 and 20 December 1994 the court held hearings. It ordered a supplementary expert opinion.

10. In February and March 1995 the applicant requested the court to appoint another expert. Subsequently, he challenged an expert opinion and the expert who prepared it. The court dismissed his applications on 22 March and 31 May 1995.

11. On 23 June 1995 the court ordered another expert opinion. The opinion was submitted to the court on 5 September 1995.

12. On 17 October 1995, 16 January, 2 April and 15 May 1996 the court held hearings. It ordered three supplementary expert opinions.

13. Between 12 August and 5 December 1996 the proceedings were stayed because the applicant failed to pay an advance fee towards the costs of a supplementary expert opinion.

14. In December 1996 an expert opinion was submitted to the court; subsequently, the court ordered another expert opinion.

15. In February 1997 the applicant challenged the appointment of a new expert.

16. On 17 September 1997 the expert submitted his opinion to the court.

17. On 24 November 1997 the court held a hearing.

18. On 28 November 1997 the Częstochowa District Court gave a decision in which it dissolved the co-ownership.

19. The neighbours appealed against it.

20. On 26 May 1998 the Częstochowa Regional Court (*Sąd Wojewódzki*) quashed the impugned decision and remitted the case to the first-instance court.

21. On 22 October 1998 the court held a hearing at which it decided to hold a view of the property. The applicant requested the court not to schedule any hearing until 16 November 1998.

22. On 21 May 1999 the judge held a view of the property.

23. On 10 June 1999 the court held a hearing. Subsequently, the court ordered another expert opinion and ordered the applicant to pay an advance fee towards the costs of it.

24. On 10 September 1999 the Częstochowa District Court stayed the proceedings because the applicant had failed to pay the advance fee. The applicant's appeal against this decision was allowed by the Częstochowa Regional Court on 15 November 1999.

25. On 12 April 2000 the court held a hearing.

26. Subsequently, the neighbours challenged a court expert. Their challenge was finally dismissed on 2 June 2000.

27. On 14 July 2000 the applicant challenged another court expert. On 2 August 2000 the Częstochowa District Court dismissed his application.

28. On 18 November 2000 the expert submitted another opinion to the court.

29. On 2 April 2001 the District Court held a hearing.

30. On 11 June 2001 the applicant instituted another set of civil proceedings in which he requested permission to be connected to the public water supply and to carry out construction works on the co-owned property. The proceedings are pending before the Częstochowa District Court.

31. On 12 June 2001 the court again decided to stay the proceedings because administrative proceedings concerning a porch built by one of the neighbours were pending. The applicant appealed against this decision.

32. On 20 August 2001 the Częstochowa District Court resumed the proceedings.

33. At the hearing held on 14 January 2002 the court for the second time decided to stay the proceedings due to the administrative proceedings concerning the porch. The applicant's appeal was dismissed on 14 March 2002.

34. On 19 April 2002 the applicant applied to resume the proceedings.

35. In December 2002 and January 2003 the court requested certain municipal and central authorities to provide some information necessary for the case.

36. On 4 April 2003 the proceedings were resumed and on 12 June 2002 the court held a hearing.

37. On 7 April 2003 the Częstochowa District Court gave a decision. It dissolved the co-ownership.

38. On 28 April 2003 the applicant lodged an appeal against that decision.

39. On 1 July 2003 the Częstochowa Regional Court dismissed the appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

40. The applicant complained that the length of the proceedings had been 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...”

41. The Government contested that argument.

42. The period to be taken into consideration began not in February 1989 when the applicant initiated the proceedings, but on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. The proceedings ended on 1 July 2003 with the Czeszochowa Regional Court’s decision (see paragraphs 5 and 39 above).

It follows that the proceedings lasted over fourteen years, out of which ten years and two months are taken into consideration by the Court.

43. In assessing the reasonableness of the time in question the Court will have regard to the state of the case on 1 May 1993.

A. Admissibility

44. The Court notes that this 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. The Court therefore declares it admissible.

B. Merits

1. The submissions before the Court

45. The Government submitted that the case was rather a complex one. In particular they referred to the fact that the domestic courts had recourse to numerous expert opinions.

46. The Government further submitted that the applicant significantly contributed to the length of the proceedings, in particular, by challenging expert opinions and requesting the court to appoint new experts. Moreover, they noted that the applicant had repeatedly failed to pay within the time-limits the advance fees towards the costs of the expert opinions. Finally, the Government submitted that the other party to the proceedings had also contributed to their length.

47. As regards the conduct of the domestic authorities, the Government maintained that they acted with due diligence and that the District Court “made efforts to ensure that the process of obtaining evidence followed its proper course”.

48. The applicant disagreed with the Government and submitted that the case was a simple one. He argued that the domestic courts were solely to blame for the delay and that it partly resulted from the court-experts’ chicanery (*matactwa*). The applicant further submitted that the District Court had ordered many unnecessary expert opinions which were later disregarded by the court.

49. Finally, the applicant averred that he had not contributed to the length of the proceedings. He submitted that he had made use of his procedural rights in order to protect his property.

2. The Court’s assessment

50. 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 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 and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

51. The Court considers that the case involved a certain degree of complexity as the facts of the case had to be assessed against the expert evidence. However, the overall length of the proceedings cannot be explained by their complexity.

52. As regards the conduct of the applicant, the Court finds that he contributed to some extent to the length of the proceedings. The Court takes note of the Government’s contention that the applicant failed on several occasions to pay the costs of expert opinions which led to the staying of the proceedings (see paragraphs 8, 13, 24 and 46 above) and that he challenged the appointment of court-experts. In this connection, the Court reiterates that while the applicant is entitled to make use of his procedural rights, he must bear the consequences when it leads to delays (see, *Malicka-Wąsowska v. Poland*, (dec.), no. 41413/98, 5 April 2001). Nevertheless, the Court notes that the total period during which the proceedings were stayed on the grounds of the applicant’s failure to pay the costs was about ten months. In the light of the fact that the overall length of the proceedings, taken into consideration by the Court was ten years and two months, the Court is of the view that the applicant cannot bear the responsibility for the totality of the delay.

53. With regard to the conduct of the domestic authorities, the Court notes that while it is true that the domestic courts had difficulty in obtaining

a satisfactory expert opinion, nevertheless, the experts' work in the context of judicial proceedings was supervised by a judge, who remained responsible for the preparation and speedy conduct of proceedings (see, the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44). Moreover, the Court observes that after the hearing which had been held on 22 October 1998, the court remained inactive until 21 May 1999 when the judge held a view of the property. The Court notes that the Government have not provided any explanation for this delay.

54. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of ten years and two months, within its competence *ratione temporis*, exceeded a reasonable time.

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

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION ON ACCOUNT OF AN UNFAIR TRIAL

55. The applicant complained of a violation of Articles 6 and 13 in that he did not have a "fair trial" because his numerous attempts to challenge the court-experts had been ineffective.

56. However, the Court finds that the applicant's assertions about the violations of the above provisions of the Convention are wholly unsubstantiated.

57. It follows that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 840,000 Polish zlotys (PLN) in respect of pecuniary and PLN 360,000 in respect of non-pecuniary damage.

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

61. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

62. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, it awards the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

63. The applicant also claimed PLN 48,000 for the costs and expenses incurred before the domestic courts.

64. The Government submitted that they could not bear any responsibility for the costs and expenses incurred by the applicant during the proceedings before the domestic courts.

65. 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 before the national courts for the prevention or redress of a violation or in order to have the same established by the Court. In the present case, regard being had to the information in its possession and to the above criteria, the Court dismisses this claim (see, among other authorities, *Hertel v Switzerland* judgment of 25 August 1998, *Reports of Judgments and Decisions* 1998-VI, p 2334, § 63).

C. Default interest

66. 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 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 on account of the length of the proceedings;
3. *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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the 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;

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

Done in English, and notified in writing on 18 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President