



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

FOURTH SECTION

CASE OF HAJNRICH v. POLAND

(Application no. 44181/98)

JUDGMENT

STRASBOURG

25 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 Hajnrich 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 4 May 2004,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44181/98) 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, Marian Hajnrich ("the applicant"), on 8 August 1997.

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

3. The applicant alleged 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 21 January 2003 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1954 and lives in Świecie, Poland.

9. Between 1977 and 1992 the applicant ran a cake shop on premises leased from the Association of the Landlords and Administrators of Houses in Świecie (*Zrzeszenie Właścicieli i Zarządców Domów*) (“the Association”). On an unknown date in 1991 the Świecie District Court (*Sąd Rejonowy*) ordered his eviction.

10. On 10 December 1992 the applicant sued the Association in the Bydgoszcz Regional Court (*Sąd Wojewódzki*), seeking the return of expenses incurred in connection with the modernisation of his business premises. On 3 February 1993 the court partly exempted the applicant from court fees. Subsequently, the case was assigned to another judge.

11. The hearing listed for 30 June 1993 was adjourned. The court held hearings on 6 October and 16 December 1993. At the hearing held on 1 April 1994 the court ordered that expert evidence be obtained. On 6 June 1994 the expert report was submitted to the court.

12. On 27 September 1994 the applicant modified his claim. On 5 January 1995, upon the applicant’s request, the court joined S.C., B.M. and T.R., the co-owners of the property, to the proceedings as the defendant parties.

13. The court held hearings on 30 January and 13 May 1995. Later, the case had to be re-opened due to the change of the presiding judge. The hearings listed for 13 July and 30 October 1995 were adjourned.

14. On 5 February 1996 the applicant requested that the court issue an interim order to safeguard his claim in the proceedings, until a judgment on the merits was given. On 10 June 1996 the trial court granted the applicant’s request.

15. On 13 March and 12 April 1996 the court held further hearings.

16. On 1 August 1996 the case was referred to a new presiding judge.

17. On 6 February 1997, on the defendant’s interim appeal, the Gdańsk Court of Appeal (*Sąd Apelacyjny*) set aside the first-instance order of 10 June 1996.

18. On 28 May 1997 the court held a hearing. The hearing listed for 9 September 1997 was adjourned. On 23 October 1997 the court held a viewing of the site. A further hearing was held on 28 January 1998.

19. On 11 February 1998 the Bydgoszcz Regional Court gave its judgment. The applicant appealed on 21 April 1998. On 9 October 1998 the Gdańsk Court of Appeal held a hearing. On 23 October 1998 the Court of Appeal quashed the first-instance judgment and remitted the case.

20. On 9 April 1999 the Regional Court ordered that the applicant specify his claims and adduce the relevant evidence. On 19 April 1999 he submitted his pleadings to the court. On 6 May 1999 the court again ordered the applicant to specify and substantiate his claims. On 13 May 1999 the applicant submitted his additional pleadings.

21. On 13 July 1999 the applicant modified his claim. On 8 September 1999 the court held a hearing. It partly exempted the applicant from court fees relating to the modification of his claim. On 15 November 1999 the court revoked the exemption. On 7 December 1999 the trial court refused to entertain the modified claim as a result of the applicant's failure to pay the court fees.

22. From 23 February to 20 December 2000 the Regional Court held seven hearings.

23. On 22 December 2000 the Bydgoszcz Regional Court gave judgment. The applicant appealed against the judgment to the Gdańsk Court of Appeal. On 6 April 2001 the Bydgoszcz Regional Court rejected the appeal because the applicant had failed to pay the required court fee within the statutory time-limit.

THE LAW

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

24. 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..."

The Government contested this view.

A. Period to be taken into consideration

25. The Court first observes that the proceedings began on 10 December 1992. 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 were terminated on 22 December 2000 by the Bydgoszcz Regional Court. Thus, they lasted 8 years and 2 weeks, of which the period of 7 years, 7 months and 3 weeks falls within the Court's jurisdiction *ratione temporis*.

26. The Court recalls that in order to assess the reasonableness of the length of time in question regard must be had 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 of the length of the proceedings

1. The Government's submissions

27. The Government maintained that the case had been complex. They stressed that the applicant had modified his claim on three occasions and the trial court had to obtain two expert reports.

28. They further claimed that the national authorities had shown due diligence in the proceedings.

29. The Government argued that the applicant had contributed to the prolongation of the proceedings. They referred to the fact that the applicant had asked the court to issue an interim order to safeguard his claim and on several occasions submitted requests for an exemption from court fees.

2. The applicant's submissions

30. The applicant generally contested the Government's submissions.

31. He further argued that it was not true that the authorities had shown due diligence in the proceedings. He submitted that until February 1998 the presiding judge had been changed on several occasions and each time the trial court had had to re-open the examination of the case.

32. He claimed that he had not contributed to the length of the proceedings.

33. Referring to what was at stake for him in the litigation, the applicant stressed that it had not only involved a pecuniary claim but that it had also concerned his and his wife's workplace.

34. Lastly, he invited the Court to find a violation of Article 6 § 1.

3. The Court's assessment

35. 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], § 60, cited above).

36. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

37. As to the conduct of the applicant the Court notes that it is true that the applicant had modified his claim, however it does not appear that this significantly prolonged the trial.

38. As regards the conduct of the authorities the Court first observes that there was a delay of 10 months between 13 May 1995 and 13 March 1996 when no hearing was held (see paragraphs 13–15 above). There was further a delay in the proceedings between 12 April 1996 and 28 May 1997 (see paragraphs 15–18 above).

39. 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 was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant sought an award of 912,383.07 Polish zlotys in respect of pecuniary damage. That amount corresponded to the applicant’s principal claim in the domestic proceedings (expenses that he had incurred in connection with the modernisation of his business premises) plus accrued appropriate interest. He further claimed the sum of 200,000 Polish zlotys for non-pecuniary damage that he suffered as a result of the protracted length of the proceedings.

43. The Government did not comment on the applicant’s claims.

44. 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).

45. The Court further 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 3,500 euros (“EUR”) under that head.

B. Costs and expenses

46. The applicant also claimed 6,432.10 Polish zlotys for the costs and expenses incurred before the domestic courts and the Court.

47. Again, the Government did not comment on the applicant’s claim.

48. According to the Court’s case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. To be recoverable, the domestic costs and expenses must also be incurred to prevent or obtain redress for the violation found.

On the basis of the information in its possession, the Court finds no indication that in the present case any of the domestic costs and expenses claimed by the applicant had been incurred by him for this purpose.

The Court notes that the applicant was not represented by a lawyer in the proceedings before it. Making its own assessment on an equitable basis, the Court awards the applicant EUR 150 for postage, translation and copying expenses which he incurred in the context of filing and pursuing his application.

C. Default interest

49. 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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage and EUR 150 (one hundred fifty euros) in respect of costs and expenses, plus any tax that

may be chargeable on the above amounts, to be converted into Polish zlotys at a rate applicable at the date of the 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 25 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President