



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

FOURTH SECTION

CASE OF KREUZ v. POLAND (NO. 2)

(Application no. 46245/99)

JUDGMENT

STRASBOURG

20 July 2004

FINAL

20/10/2004

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 Kreuz v. Poland (no. 2),

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM,

Ms L. MIJOVIĆ, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 29 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 46245/99) 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 Mr Henryk Kreuz (“the applicant”), who has dual Austrian and Polish citizenship, on 17 October 1997.

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

3. The applicant alleged in particular that his case had not been heard within a reasonable time in breach of Article 6 § 1 of the Convention.

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 14 January 2003 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant has a dual Polish and Austrian citizenship. He was born in 1955 and resides permanently in Austria. At present he is living in Płock, Poland.

9. In 1989 the applicant entered into a contract with a limited liability company Unirol (hereinafter “Unirol Ltd.”) in Płock. Under the terms of the contract, Unirol Ltd. was to sell in Poland satellite dishes supplied by the applicant from Austria. On 25 March 1994 Unirol Ltd. filed an action with the Płock District Court (*Sąd Rejonowy*) against the applicant. It sought damages for breach of contract.

10. On 21 April 1994 the plaintiff modified its claim. On 21 June 1994 the District Court found that, in view of the value of the claim, it was no longer competent to deal with the subject matter and referred the case to the Płock Regional Court (*Sąd Wojewódzki*).

11. On 18 November 1994 the Regional Court exempted Unirol Ltd. from court fees.

12. On 16 December 1994 the court held the first hearing. At that hearing the applicant submitted a counterclaim, seeking payment of profits to which he was entitled under the terms of the contract. He also applied for an exemption from court fees but to no avail. The hearing was adjourned at the request of Unirol Ltd.

13. On 17 March 1995 the trial court held a hearing. The plaintiff was absent at that hearing. On 24 March 1995 the plaintiff’s representative informed the court that, due to his illness, he would not be able to appear before it until the end of June. On 14 July 1995 the court adjourned the hearing, as it appeared that Unirol Ltd. had not received the summons. The hearing listed for 4 September 1995 was adjourned due to the illness of Unirol Ltd.’s representative.

14. The court adjourned three further hearings listed for 12 January, 16 February and 10 May 1996 due to the absence of the plaintiff’s representative. On 2 August 1996 the court held a hearing but the plaintiff’s representative again failed to attend it. The court ordered him to appear at the next hearing on pain of staying the proceedings. The hearings listed for 18 October and 8 November 1996 were adjourned at the request of Unirol Ltd.

15. On 4 November 1996 the trial court dismissed the applicant’s challenge of the presiding judge. On 20 December 1996 the court held a hearing.

16. At the hearing held on 28 February 1997 the court closed the examination of the case and informed the parties that the judgment would be

delivered on 5 March 1997. On 5 March 1997 the court decided that it would not deliver the final decision and resumed the proceedings.

17. The hearing listed for 23 May 1997 was cancelled because the judges dealing with the case had withdrawn.

18. At the hearing held on 14 November 1997 the court heard a witness. Further hearings were held on 8 May and 5 June 1998.

19. In the meantime, the court had lost part of the case-file. For that reason, the hearing listed for 10 July 1998 was cancelled. On 27 August 1998 the Regional Court ordered that the lost case-file be reconstituted.

20. On 9 June 1999 the court held a hearing and ordered the parties to specify their claims.

21. On 15 October 1999 the court held the next hearing and ordered that an expert opinion be obtained. On 12 April 2000 the expert submitted the relevant opinion to the court.

22. On 20 September 2000 Unirol Ltd. asked the court to appoint another expert. On 8 November 2000 the court held a hearing and heard evidence from the expert.

23. On 22 November 2000 the Płock Regional Court delivered a judgment. Both parties appealed. On 6 May 2002 Unirol Ltd. asked the Court of Appeal to secure the claim. On 17 May 2002 the Court of Appeal held a hearing.

24. On 12 June 2002 the Warsaw Court of Appeal gave judgment. On 13 December 2002 copies of the judgment were served on the parties. On 20 and 29 January 2003 respectively, the plaintiff and the applicant lodged their cassation appeals with the Supreme Court. On 27 June 2003 the Supreme Court dismissed both cassation appeals.

THE LAW

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

25. 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...”

26. The Government contested this view.

A. Period to be taken into consideration

27. The Court observes that the period to be taken into consideration began on 25 March 1994 when Unirol Ltd filed its action with the Płock District Court. The proceedings were terminated by the Supreme Court on 27 June 2003. Thus, they lasted nearly 9 years and 3 months.

B. Reasonableness of the length of the proceedings.

1. The Government's submissions.

28. The Government submitted that the case had been complex on account of the fact that the court needed to obtain an expert opinion. They further stressed that the applicant had contributed to the prolongation of the proceedings. They referred to the fact that the applicant had on several occasions modified his claim, and had submitted numerous letters and pleadings to the trial court. Lastly, they maintained that the authorities had shown due diligence in the proceedings. In conclusion, they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

2. The applicant's submissions

29. The applicant argued that he had not contributed to the duration of the proceedings. He claimed that most of his letters to the trial court had been his applications for the proceedings to be accelerated. He further maintained that at least ten hearings had been adjourned due to the plaintiff's failure to appear before the court. Lastly, he asked the Court to find a violation of Article 6 § 1 of the Convention.

3. The Court's assessment

30. 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).

31. 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.

32. The Court considers that the applicant's conduct, in particular the manner in which he exercised his procedural rights, had not substantially contributed to the length of the proceedings.

33. As regards the conduct of the authorities, the Court observes that there were periods of inactivity in the proceedings. In particular, there were two intervals of eight and seven months, respectively (from 5 March to 14 November 1997 and from 14 November 1997 to 8 May 1998 - see paragraphs 16-18 above). Furthermore, there was a significant delay of one year when no hearing took place from 5 June 1998 to 9 June 1999 (see paragraphs 18-20 above). The Court also considers that the authorities were responsible for delays in the process of obtaining expert evidence i.e. between 15 October 1999 and 8 November 2000 (see paragraphs 21 and 22 above).

34. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant sought an award of 151,515 euros in respect of pecuniary damage. That amount corresponded to the value of 5 years' worth of salary which the applicant would have received in Austria if he had not been involved in the trial in Poland. He further claimed the sum of 30,000 euros for non-pecuniary damage that he had suffered as a result of the protracted length of the proceedings.

38. The Government submitted that the applicant's claims were excessive. They further argued that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention.

39. As regards the pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicant had 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).

40. 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 be sufficiently 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 3,600 euros (“EUR”) under that head.

B. Costs and expenses

41. The applicant did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

C. Default interest

42. 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 3,600 (three thousand six hundred 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 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;
3. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 20 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President