



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

FOURTH SECTION

CASE OF WRÓBEL v. POLAND

(Application no. 46002/99)

JUDGMENT

STRASBOURG

20 July 2004

FINAL

15/12/2004

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 Wróbel 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 Mrs F. ELEN-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. 46002/99) 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 a Polish national, Waław Wróbel (“the applicant”), on 27 March 1998.

2. The Polish Government (“the Government”) were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged that the criminal proceedings in his case exceeded a “reasonable time” within the meaning 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. By a decision of 15 October 2002 the Court declared the application admissible.

7. 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).

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1929 and lives in Konin.

10. He was not legally represented before the Court. The respondent Government were represented by Mr Krzysztof Drzewicki, of the Ministry of Foreign Affairs.

11. In 1992 the applicant was the manager of a state-owned bank, located in Kramsk. On 18 March 1992 the Konin Regional Prosecutor (*Prokurator Wojewódzki*) instituted an investigation concerning the applicant. Between 18 March 1992 and 2 June 1992 the prosecutor heard twenty-six witnesses in the case.

12. On 2 June 1992 the investigation was stayed until the completion of a control of the bank in Kramsk by experts of the National Bank of Poland. The investigation was resumed on 7 October 1992.

13. Between 15 October and 18 December 1992 the prosecutor heard a further eight witnesses.

14. On the latter date the prosecutor charged the applicant with accepting bribes and mismanagement of the bank.

15. On the same day he placed the applicant under police supervision and imposed bail in the amount of 100,000,000 old Polish zlotys. Subsequently, the applicant's car was impounded.

16. On 28 December 1992 the prosecutor stayed the investigation because of the applicant's state of health.

17. On 29 January 1993 the applicant added to the case-file a medical certificate stating that he was unable to take part in the proceedings for an indefinite period of time.

18. On 11 February 1993 the prosecutor, at the request of the applicant's counsel, released the applicant from police supervision.

19. On 15 May 1993 the expert appointed by the prosecutor submitted his opinion to the effect that the applicant was able to participate in the proceedings.

20. On 28 May 1993 the prosecutor heard a witness. In November 1993 he heard four further witnesses and requested the receiver in bankruptcy of the bank in Kramsk to submit certain documents concerning the bank.

21. On 18 October and 27 December 1993 the applicant was questioned by the prosecutor. On the latter date the prosecutor laid additional charges against the applicant. On 29 December 1993 he decided to submit to the court a separate bill of indictment against the other suspects in the applicant's case.

22. On 30 December 1993 the prosecutor discontinued the part of the investigation concerning the alleged accepting of bribes.

23. On 31 December 1993 he submitted to the Konin Regional Court (*Sąd Wojewódzki*) the bill of indictment.

24. On 8 March 1994 the court transferred the case to the Konin District Court (*Sąd Rejonowy*), considering that it had no jurisdiction over that type of offences.

25. On 22 June 1994 the District Court ordered a psychiatric examination of the applicant.

26. On 15 July 1994 it appointed a legal-aid counsel for the applicant. Subsequently, the counsel informed the court that due to a conflict of interests he could not defend the applicant. On 20 October 1994 it appointed another defence counsel for the applicant. Subsequently, after that counsel's refusal to defend the applicant, the court appointed another one.

27. In August 1994 the court mistakenly scheduled a hearing for 31 October 1994, which was a public holiday. In reply to the applicant's complaint, on 2 December 1994 the President of the Konin District Court apologised to him for that mistake.

28. The hearing scheduled for 22 December 1994 was adjourned at the request of the applicant's counsel.

29. On 13 February 1995 the court refused the applicant's request for release from the preventive measures. On 9 March 1995 the Konin Regional Court dismissed the applicant's appeal against that decision.

30. On 27 February and 6 March 1995 the District Court held hearings.

31. On 29 March 1995 the applicant's counsel informed the court that the applicant was in hospital. On 24 May 1995 he submitted medical certificates confirming the applicant's inability to participate in the proceedings.

32. On 29 May 1995 the court dismissed the applicant's further request for release from the preventive measures. On 22 June 1995 the Regional Court upheld that decision.

33. On 5 June 1995 a hearing was adjourned because of the applicant's illness. The court ordered an expert opinion on the applicant's health. On 21 August 1995 the experts submitted their opinion, in which they stated that the applicant's illness made it impossible for him to participate in the proceedings.

34. On 28 August 1995 the court stayed the proceedings, relying on the experts' opinion as to the applicant's health. The applicant's counsel appealed against that decision.

35. The Konin Regional Court ordered the preparation of a supplementary opinion on the applicant's health. It further requested the Department of Forensic Medicine of the Poznań Medical Academy to give their opinion. According to the latter opinion, the applicant could participate in the proceedings.

36. On 13 November 1995 the Konin Regional Court allowed the appeal and quashed the District Court's decision by which the proceedings had been stayed.

37. The hearing scheduled for 19 December 1995 was adjourned at the request of the applicant's counsel.

38. A hearing was held on 30 January 1996.

39. The applicant's counsel requested the adjournment of the hearing scheduled for 5 March 1996, submitting that he would have a hearing in another case at the same time.

40. The hearing scheduled for 26 March 1996 was adjourned due to the absence of the applicant's counsel.

41. Further hearings were held on 9 and 30 April 1996.

42. The hearing scheduled for 11 June 1996 was adjourned at the request of the applicant's counsel.

43. At the hearing held on 13 August 1996 the witnesses whose examination the applicant had requested failed to appear. The court adjourned the hearing until 10 September 1996 and ordered the police to bring those witnesses to the subsequent hearing.

44. On 10 September 1996 the witnesses were not brought to the court and the police stated that one of them lived in Germany.

45. The witnesses also failed to attend the hearing of 4 October 1996. Subsequently, the applicant's counsel requested the examination of two further witnesses.

46. On 14 October 1996 the Ministry of Justice, in reply to the District Court's enquiry, informed it that the witness who was detained in Belarus could not be extradited to Poland.

47. On 7 November 1996, in reply to the applicant's complaint, the Ministry of Justice found the proceedings lengthy. It considered that the delay was caused, *inter alia*, by his illness and witnesses' failure to attend hearings. The Ministry informed the applicant that it would take the proceedings under its administrative supervision.

48. On 10 December 1996 and 14 January 1997 the court held further hearings.

49. On 17 January 1997 it ordered an expert opinion, at the request of the applicant's counsel. The opinion was submitted to the court on 29 September 1997.

50. At the hearing held on 16 December 1997 an expert was questioned and a supplementary opinion was ordered, at the request of the applicant's counsel.

51. On 18 February 1998, in reply to the court's request, the Department of Accountancy of the Poznań Academy of Economics informed the court that due to their enormous workload nobody had agreed to prepare the requested opinion. In March 1998 the court asked the expert already

appointed in the case to supplement his previously submitted opinion. The supplementary opinion was submitted on 7 September 1998.

52. The hearing scheduled for 13 October 1998 was adjourned because of that expert's failure to attend it.

53. The court held a hearing on 20 November 1998. Subsequently, it again requested the Academy of Economy to indicate an expert who could prepare an opinion in the case, but to no avail.

54. The hearing scheduled for 18 December 1998 was adjourned because of the absence of the applicant's counsel.

55. The hearing scheduled for 2 February 1999 was adjourned, as the court decided to appoint another expert in accountancy. The opinion of that expert was submitted to the court on 30 August 1999.

56. Subsequently, the court fixed the date of the following hearing for 19 October 1999. The applicant's counsel requested that a hearing be held on another date, submitting that he would not be able to participate on the date indicated by the court.

57. Hearings were held on 7 and 17 December 1999.

58. On 23 December 1999 the Konin District Court gave a judgment. The applicant was acquitted.

THE LAW

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

59. The applicant complained that the proceedings in his case had exceeded a reasonable time, within the meaning of Article 6 § 1 of the Convention, which provides, 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...”

A. The parties' submissions

60. As the applicant's observations did not contain any information relevant to the analysis of the length issue, only those of the Government are summarised below.

61. The Government were of the opinion that the case had been complex because its examination had required a profound knowledge of accountancy. In particular to that end two court experts had to be appointed and ordered to analyse several documents relating to the management of the bank. A significant number of witnesses had been heard. In the bill of indictment the prosecutor had requested the examination of 43 individuals. Reference was

made to two psychiatrists who had to examine the applicant's health. A certain delay had been caused by the difficulties in the summoning of two witnesses, the examination of whom had been requested by the applicant.

62. The Government were also of the view that the applicant and his counsel had contributed to the prolongation of the proceedings. They made reference to periods between 28 December 1992 and 15 May 1993, as well as between 29 March and 13 November 1995, when the proceedings could not be conducted because of the applicant's health problems. Out of 13 hearings which had to be adjourned, only one had been adjourned for the reasons attributable to the District Court. In most cases the adjournments had been caused by the applicant's defence counsel. Having regard to the lack of any means of disciplining the defence counsel, the court could not be held responsible for the delay caused by him. The applicant, as well as his counsel, had submitted new evidence motions at a late stage of the proceedings and should bear the consequences of the delays caused thereby.

63. The Government submitted that the authorities dealing with the case at issue had showed due diligence. They pointed out that the District Court had scheduled 25 hearings in the course of the proceedings, out of which 13 had been adjourned mainly (except for one case) for reasons independent from the court: 7 hearings had to be adjourned for reasons attributable to the applicant's counsel, 1 hearing because of the applicant's illness and 4 hearings due to the absence of witnesses and an expert. On several occasions the court had ordered that witnesses who had failed to attend a hearing be brought to the subsequent hearing by the police. The court had attempted to accelerate the preparation of an expert opinion.

64. Finally, the Government noted that the applicant had not been detained during the proceedings and therefore special diligence had not been required.

B. The Court's assessment

65. The Court notes that the proceedings began on 18 December 1992, when the prosecution authorities laid charges against the applicant. The Court finds that the investigation commenced earlier, but as it is not clear from the parties' submissions whether the applicant was notified about the decision to investigate, the date when the charges were laid is proposed to be taken as the beginning of the period under consideration (see *Włoch v. Poland*, no. 27785/95, §§ 144 and 145, ECHR 2000-XI). On 23 December 1999 the applicant was acquitted. The proceedings therefore lasted 7 years and 5 days, out of which the period of 6 years, 7 months and 22 days falls within the Court's competence *ratione temporis*.

66. The Court accepts the Government's contention that the delay in the examination of the case was caused to some extent by the applicant and his counsel's conduct. However, there are periods of inactivity on the part of

the court on which the Government did not comment. The Court would mention the periods between January and December 1997, between December 1997 and October 1998, as well as between December 1998 and October 1999. It is to be noted that in all those periods expert opinions were being prepared for most of the time. The Court further notes that the Government have not explained why it took so long for the experts to prepare their opinions. They limit their comment to the statement that the District Court attempted to accelerate the experts' work. The Court would recall that the principal responsibility for the delay due to the expert opinions rests ultimately with the State (see *Capuano v. Italy* judgment of 25 June 1987, Series A no. 119, p. 14, § 32; *Wojnowicz v. Poland*, no. 33082/96, § 65, 21 September 2000).

67. The Court emphasises that the applicant was finally acquitted of all the charges. Although, the complexity of the criminal charges against the applicant, as well as the delay caused by his and his counsel's conduct, show that the prolongation of the proceedings resulted, to some extent, from factors independent of the State authorities, the Court considers that the overall duration of the proceedings, including a period of over 6,5 years, before only one court, and a total period of over two years of inactivity for which the court experts and the District Court bear entire responsibility, exceeds a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed the sum of 199,636,43 Polish zlotys (PLN) as compensation for the damage he allegedly suffered as a result of the length of the proceedings. He submitted that the sum claimed by him consisted of:

- a difference in the value of bail he had deposited in 1992 (PLN 30,236,43);
- compensation for the alleged destruction of his car which had been secured as evidence by the prosecuting authorities (PLN 36,000,00);
- the expenses incurred in connection with the domestic proceedings such as lawyers' fees (PLN 15,000,00);

- the costs of his medical treatment (PLN 38,400,00).

The applicant did not supply any documents confirming these costs and expenses.

71. The applicant also claimed PLN 400,000,00 in respect of non-pecuniary damage. He submitted that the amount claimed relates to suffering and distress caused by the excessive duration of the proceedings.

72. The Government were of the view that the amounts claimed by the applicant were exorbitant. They pointed out that there was no causal link between the pecuniary damage allegedly sustained by the applicant and the length of the proceedings. The Government considered that finding a violation in the case at issue would provide in itself just satisfaction. Alternatively, they requested the Court to award compensation for non-pecuniary damage on the basis of its case-law.

73. As regards the pecuniary damage, the Court observes that the losses enumerated by the applicant are speculative in nature. 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 Kudla v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI)

74. The Court further considers that in spite of the fact that the applicant, to some extent, contributed to the length of the proceedings, he certainly suffered non-pecuniary damage, such as distress and frustration, 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 EUR 4,000 under that head.

B. Costs and expenses

75. The applicant also claimed PLN 4,000,00 for the costs and expenses incurred before the domestic courts and the Court.

76. The applicant did not supply any documents confirming these costs and expenses.

77. The Government did not comment on those claims.

78. Having regard to the fact that the applicant quantified his claim for domestic costs and expenses, but failed to submit relevant fee notes or bills, the Court dismisses it.

C. Default interest

79. 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 4,000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on above amount, to be converted into Polish zlotys at the 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* unanimously 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