



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

FOURTH SECTION

CASE OF KUSIAK v. POLAND

(Application no. 50424/99)

JUDGMENT

STRASBOURG

21 September 2004

FINAL

21/12/2004

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 Kusiak 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 31 August 2004,

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

PROCEDURE

1. The case originated in an application (no. 50424/99) 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 two Polish nationals, Mrs Maria Kusiak ("the first applicant") and Mr Marian Kusiak ("the second applicant").

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

3. On 11 June 2002 the Court declared the application partly inadmissible and 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 decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicants are a married couple. The first applicant was born in 1945 and the second in 1940. They both live in Ożarów, Poland.

5. Civil proceedings concerning delimitation of various plots of land belonging to the applicants began on 22 May 1982. On 22 September 1982 the Pruszków District Court (*Sąd Rejonowy*) gave a decision. The applicants appealed. On 9 December 1982 the Warsaw Regional Court (*Sąd Wojewódzki*) set aside the first-instance decision and remitted the case.

6. Following the remission of the case, the Pruszków District Court held a number of hearings and ordered that several expert reports be prepared.

On 30 September 1985 the Pruszków District Court gave a decision. Upon the applicants' appeal, on 10 February 1986 the Warsaw Regional Court set aside the decision and remitted the case for re-examination.

7. Between 1986 and 1 May 1993 the District Court held 11 hearings.

8. After 1 May 1993 the Pruszków District Court held hearings on the following dates: 29 September, 18 November, 28 December 1993, 1 February, 4 March, 25 March and 20 April 1994.

9. On 31 May 1994 the court held a viewing of the site. The next hearing was held on 21 October 1994.

10. On 29 March 1995 the trial court held a hearing and stayed the proceedings because M.K., a party to the proceedings, had died. The applicants requested that the proceedings be resumed. On 5 January 1996 the court refused to resume the proceedings.

11. On 20 March 1996 the applicants complained to the Ministry of Justice about the delay in the proceedings. On an unspecified date their complaints were referred to the President of the Warsaw Regional Court, who replied thereto on 4 July 1996. He acknowledged that the proceedings were indeed lengthy and promised to supervise their conduct.

12. On 18 June 1996, on the applicants' appeal, the Warsaw Regional Court amended the decision of 5 January 1996 and resumed the proceedings.

13. Subsequently, the Pruszków District Court held hearings on the following dates: 9 December 1996, 4 September, 21 October and 3 December 1997.

14. On 3 December 1997 the case file was sent to an expert who was to prepare an opinion. The expert returned the case-file on 20 May 1999.

15. On 1 June 1999 the court delivered a supplementary expert report and ordered the parties to submit their observations on it. On 23 September and 19 November 1999 the court held hearings. On 19 November 1999 the court gave a decision and ordered a certain M.G. to join the proceedings. On 7 February 2000 the court held a further hearing.

16. On 18 February 2000 the applicants again complained to the President of the Warsaw Regional Court about the delay in the proceedings.

17. On 23 May 2001 the court stayed the proceedings. The applicants appealed on 8 June 2001. On 11 December 2001 the court dismissed their appeal.

18. On 19 September 2001, in reply to the applicants' complaint about the length of the proceedings, the Minister of Justice admitted that there was a certain delay in the proceedings. He further observed that the President of the Warsaw Regional Court and the President of the Pruszków District Court had supervised the conduct of the proceedings and had made reports on their progress.

19. It appears that the proceedings are still stayed and, therefore, pending.

THE LAW

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

20. The applicants complained that the length of the proceedings in their case had exceeded a reasonable time as 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...”

21. The Government contested that argument.

A. The period to be taken into consideration

22. The Court first observes that the proceedings began on 22 May 1982. However, 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. In the light of the material available to the Court at the date of the adoption of the present judgment, the proceedings have not yet ended. They thus have lasted nearly 22 years and 4 months, of which 11 years and 5 months falls within the Court's jurisdiction *ratione temporis*.

23. In order to assess the reasonableness of the length of time in question, the Court will have regard 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. Admissibility

24. 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. It must therefore be declared admissible.

C. Merits

1. The Government's submissions

25. The Government submitted that the case had not been significantly complex. However, they stressed that the trial court had needed to obtain expert evidence.

26. They maintained that special diligence had not been required on the part of the domestic courts, unlike in cases concerning employment, pensions and disability pensions.

27. The Government further claimed that the domestic authorities had shown due diligence in the proceedings. Nevertheless, they acknowledged that there had been delays in the proceedings resulting from the slow process of obtaining evidence. They referred to the delay between 3 December 1997 and 20 May 1999. They stated that such a long period of inactivity had been “totally unacceptable”.

28. They were of the opinion that the applicants had contributed to the prolongation of the proceedings as they had challenged the expert opinions on several occasions.

29. In conclusion the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

2. The applicants' submissions

30. The applicants generally disagreed with the Government's submissions.

31. They claimed that there had been much at stake for them in the proceedings as they had concerned their property rights. Moreover, the excessive length of the proceedings had put a severe strain on them.

32. They further argued that they had not contributed to the length of the proceedings.

33. Lastly, they maintained that there had been a violation of Article 6 § 1 of the Convention.

3. The Court's assessment

34. 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, *Humen v. Poland* [GC], § 60 cited above).

35. The Court notes that the Government acknowledged that the case had not been particularly difficult to determine (see paragraph 25 above). It does not see a reason to hold otherwise. Even though the proceedings involved a certain degree of complexity on account of the need to obtain evidence, it cannot be said that this in itself justified their total length.

36. As regards the conduct of the authorities, the Court notes that there were several delays in the proceedings resulting from the slow process of obtaining evidence. In particular there was a substantial delay between

3 December 1997 and 20 May 1999 referred to by the Government (see paragraph 14 above). There was a further period of inactivity when no hearings were held (i.e. from 9 December 1996 to 4 September 1997) (see paragraph 13 above). The Court considers that the Government's observations do not explain these delays.

37. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicants sought an award of 293,300 Polish zlotys in respect of pecuniary damage. That amount corresponded in particular to the loss of value of the applicants' property. They further claimed the sum of 100,000 Polish zlotys for non-pecuniary damage that they suffered as a result of the protracted length of the proceedings.

41. The Government submitted that the applicants' claims for just satisfaction had not been duly specified.

42. As regards the pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicants have 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 them under that head (see, *mutatis mutandis* *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

43. The Court further considers that the applicants 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 applicants a total sum of EUR 7,000 under that head.

B. Costs and expenses

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

C. Default interest

45. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 together with any tax that may be chargeable, 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President