



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

FOURTH SECTION

CASE OF FOJCIK v. POLAND

(Application no. 57670/00)

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 Fojcik v. Poland,

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 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. 57670/00) 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, Ms Hildegarda Fojcik ("the applicant"), on 27 August 1999.

2. The applicant died on 25 September 2002. On 30 May 2003 the applicant's daughter, Ms Stanisława Fojcik, informed the Court that she wished to pursue the application. By letter of 14 November 2003 and in their observations of 7 January 2004 the Government objected to that.

3. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of the Foreign Affairs.

4. On 9 October 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 FACTS

5. The applicant was born in 1925 and lived in Jankowice, Poland.

A. Facts before 1 May 1993

6. On 6 February 1973 the applicant applied to the Gliwice District Commission for Mining Damage (*Okręgowa Komisja do Spraw Szkód Górniczych*) for compensation for damage caused to her property and her plantation of fruit trees. The case was directed against the Rybnik Mining Company "Chwalowice".

7. Between 20 September 1982 and 21 October 1991 the applicant on five occasions lodged similar applications.

8. On 15 January 1990 the District Commission for Mining Damage examined one of her applications. It partly allowed it and awarded the applicant compensation.

9. It appears that following the applicant's appeal, on 12 November 1991, the District Commission for Mining Damage amended its own decision.

10. The applicant appealed against this decision. She submitted, *inter alia*, that the Commission failed to examine her four applications lodged in 1982, 1983, 1984 and 1988.

11. On 30 September 1992 the Katowice Appellate Commission for Mining Damage (*Odwoławcza Komisja do spraw Szkód Górniczych*) quashed the impugned decision and remitted the case to the District Commission. It ordered the Commission to examine all applications for compensation lodged by the applicant between 1973 and 1991.

12. On 24 March 1993 the District Commission for Mining Damage gave its decision. The applicant appealed against it.

B. Facts after 1 May 1993

13. On 2 September 1994 a new law entered into force which provided that the civil courts would be competent to examine the applications for compensation for mining damage and abolished the Commissions for Mining Damage (*Ustawa z dnia 4 lutego 1994, Prawo geologiczne i górnicze*).

14. Accordingly, the applicant's case was transferred to the Rybnik District Court (*Sąd Rejonowy*) which, on 24 January 1995, decided that the Katowice Regional Court (*Sąd Wojewódzki*) would be competent to examine the case.

15. On 5 April 1995 the court held a hearing.

16. Between 7 June 1995 and 4 April 1996 the proceedings were stayed since the applicant's counsel had apparently failed to specify her claims.

17. Subsequently, the trial court ordered that an expert opinion be obtained.

18. On 19 November 1996 the expert submitted his opinion to the court.

19. On 20 December 1996 the trial court held the second hearing at which it heard the expert. The court further decided to prepare another expert opinion.

20. On 21 January 1997 the applicant challenged the trial judge on the grounds that as a former member of the District Commission for Mining Damage he had given decisions in her case.

21. On 28 March 1997 the Katowice Regional Court dismissed the challenge.

22. On 28 May 1997 the Katowice Regional Court held a hearing and on 4 June 1997 it gave judgment. The court partly allowed the applicant's action and awarded her compensation for damage sustained between 1972 and 1996.

23. On 17 July 1997 the applicant lodged an appeal against this judgment.

24. On 20 January 1998 the Katowice Court of Appeal (*Sąd Apelacyjny*) held a hearing and on 29 January 1998 it quashed a part of the impugned judgment and remitted it to the Regional Court. The appellate court upheld the remainder of the judgment.

25. On 11 March 1998 the applicant lodged a cassation appeal against this judgment with the Supreme Court (*Sąd Najwyższy*).

26. At the hearing held on 22 April 1999 the Supreme Court dismissed her cassation appeal.

27. Following the partial remittal of the case, the Katowice Regional Court scheduled a hearing for 22 December 1999. It appears that this hearing was adjourned. Subsequently, the court ordered that an expert opinion be obtained.

28. On 15 March 2000 the Katowice Regional Court held a hearing at which it gave judgment.

29. The applicant lodged an appeal against this judgment.

30. On 4 August 2000 the Katowice Court of Appeal held a hearing and gave judgment. The appellate court established that the trial court had failed to inform the applicant and her representative about the hearings. As a result, the court quashed the Regional Court's judgment and remitted the case to the first-instance court.

31. On 13 December 2000 a hearing was held.

32. On 1 February 2001, the court ordered that another expert opinion be prepared. Subsequently, on several occasions, the court asked the expert to finish preparation of his opinion.

33. On 23 November 2001 the expert submitted his opinion to the court. Both parties challenged it.

34. On 25 January, 19 April, 24 May and 13 December 2002 the court held hearings. It ordered several new expert opinions.

35. On 20 December 2002 the Katowice Regional Court gave judgment. The court partly allowed the applicant's action.

36. On 8 February 2003 the applicant lodged an appeal against this judgment.

37. On 9 October 2003 the Katowice Court of Appeal held a hearing and gave judgment. The appellate court quashed the Regional Court's judgment and remitted the case to the first-instance court.

38. The proceedings are pending before the Katowice Regional Court.

THE LAW

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

39. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement 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...”

40. The Government contested that argument.

41. The period to be taken into consideration began not in February 1973 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 are pending (see paragraphs 6 and 38 above).

It follows that the proceedings lasted over thirty-one years, out of which eleven years and two months are taken into consideration by the Court.

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

A. Admissibility

43. The Government submitted that the application should be declared incompatible *ratione personae* with the Convention and struck out of the list of cases. The Government were of the opinion that “the applicant's daughter can claim to be neither a party to the proceedings before the Court nor a direct or even indirect victim of violation of the Convention”.

44. The applicant's daughter argued that she was the applicant's only heir and therefore she wished to pursue the application lodged by her late mother. The applicant's daughter further submitted that she had represented

her mother in the domestic proceedings and had assisted her in the proceedings before the Court.

45. In view of its own case-law (see *X v. France* judgment of 31 March 1992, Series A no. 234-C, p. 89, § 26), the Court accepts that, as the deceased's heir, the daughter has sufficient interest to justify the continuation of the examination of the case.

46. Accordingly, the Court rejects the Government's preliminary objection. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. The Court will therefore declare it admissible.

B. Merits

47. The parties discussed various criteria which the Court has applied in such cases, such as the exact period to be taken into consideration, the degree of complexity of the case, the parties' conduct, and so on. The Court notes, however, that its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance those circumstances call for a global assessment. The Court does not deem it necessary to consider the question in such detail (see, among other authorities, *Obermeier v. Austria*, judgment of 28 June 1990, Series A, no. 179, pp. 23-24, § 72; *Mianowski v Poland*, no. 42083/98, § 46, 16 December 2003).

48. The Court considers that the subject matter of the case involved some degree of complexity as the facts of the case had to be assessed against the expert evidence. However, it notes that over thirty-one years after the litigation started, the case is still pending and no final decision has yet been reached. Such an inordinate delay in deciding the case cannot be justified by its complexity or the conduct of the applicant who made use of her procedural rights by, *inter alia*, challenging expert opinions. It follows that, having regard to the state of the case on 1 May 1993, the Court cannot regard as "reasonable" the subsequent lapse of time of over eleven years.

There has therefore been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

49. The applicant further submitted that she did not have a "fair trial" in that the Regional Court's judge was not impartial. The applicant also complained that the amount of compensation awarded to her by the domestic courts was inadequate.

50. However, the Court notes that the proceedings in question are pending before the domestic courts, and therefore, this complaint is premature.

51. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 367,194.37 Polish zlotys (PLN) in respect of pecuniary and PLN 400,000 in respect of non-pecuniary damage.

54. The Government asked the Court to rule that finding a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

55. 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).

56. 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, the Court considers that, in the particular circumstances of the instant case and deciding on equitable basis, the applicant should be awarded 10,000 euros (EUR) in respect of non-pecuniary damage.

B. Default interest

57. 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 10,000 (ten 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 21 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President