



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

FOURTH SECTION

**CASE OF ZYS-KOWALSKI AND OTHERS v. POLAND**

*(Application no. 70213/01)*

JUDGMENT

STRASBOURG

28 September 2004

**FINAL**

***28/12/2004***

*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 Zys-Kowalski and Others 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 J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

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

Having deliberated in private on 7 September 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 70213/01) 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 four Polish nationals, Mr Maciej Zys-Kowalski, Mrs Danuta Kowalska, Mr Krzysztof Kowalski and Ms Marta Kowalska (“the applicants”), on 10 May 2000.

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

3. On 28 January 2003 the Court 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 were born in 1975, 1947, 1961 and 1985 respectively and live in Zgierz, Poland.

**A. Facts before 1 May 1993**

5. On 8 July 1992 the company with which the applicants had concluded a lease contract sued them for payment before the Łódź Regional Court (*Sąd Wojewódzki*).

6. On 9 March 1993 the court held the first hearing.

7. At a hearing on 6 April 1993 the applicant brought a counterclaim for payment.

8. On 27 April 1993 the court held a hearing.

### **B. Facts after 1 May 1993**

9. On 17 March 1994 the court held a hearing.

10. A hearing scheduled for 21 April 1994 was adjourned because the judge was ill.

11. A hearing set down for 18 May 1994 was adjourned because witnesses failed to appear.

12. On 18 January 1995 the applicants sent a letter to the court asking for a hearing date to be fixed.

13. On 21 June, 10 July and 3 September 1996 and 17 March 1997 were adjourned because the parties had started friendly settlement negotiations.

14. On 18 June, 28 October and 11 December 1997, 19 February, 20 April and 17 July 1998 the court held hearings.

15. On an unspecified date in 1999 the composition of the court changed.

16. On 11 February 1999 the court ordered that expert evidence be obtained. The expert report was submitted to the court on 20 April 1999.

17. On 9 June, 6 September, 4 October and 20 December 1999 the court held hearings.

18. On 21 December 1999 the court allowed the plaintiff's claim and dismissed the applicants' counterclaim.

19. On 19 May 2000 the Łódź Court of Appeal (*Sąd Apelacyjny*) dismissed the applicants' appeal against the first-instance judgment.

20. On 30 June 2000 the applicants lodged a cassation appeal.

21. On 11 January 2002 the Supreme Court (*Sąd Najwyższy*) refused to deal with the appeal. A copy of the decision was served on the applicants on 27 March 2002.

## **THE LAW**

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

22. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, 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...”

23. The Government contested that argument.

#### **A. Period to be taken into consideration**

24. The proceedings started on 8 July 1992. However, the period to be taken into consideration began only on 1 May 1993, when Poland's declaration recognising the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see, among other authorities, *Humen v. Poland*, [GC], no. 26614/95, 15 October 1999, § 59). The period in question ended on 11 January 2002. It thus lasted 9 years and 7 months of which a period of 8 years and 9 months falls within the Court's jurisdiction *ratione temporis*.

#### **B. Admissibility**

##### *1. Article 6 § 1*

25. The Court notes that the complaint under Article 6 § 1 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.

##### *2. Article 1 of Protocol No. 1*

26. The applicants further complained in general terms that the length of the proceedings hindered their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1. They further alleged that the outcome of the proceedings had an adverse effect on the exercise of their property rights.

27. However, the Court considers that the material in its possession does not disclose any appearance of a violation of the applicant's property rights.

Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

#### **C. Merits**

##### *1. The submissions of those appearing before the Court*

28. The Government submitted that the case was a complex one, since it was necessary to obtain expert evidence.

29. They further argued that what was at stake for the applicants was not of particular importance to them. Consequently, special diligence on the part of the domestic authorities was not required in the present case.

30. As regards the conduct of the applicants, the Government considered that they had contributed to the prolongation of the trial. They had submitted several motions to the court, asking it to adjourn hearings in view of the fact that friendly settlement negotiations were being conducted.

31. As for the conduct of the domestic authorities, the Government maintained that they had proceeded with due diligence when dealing with the case.

32. Lastly, the Government invited the Court to find that there had been no violation of Article 6 § 1.

33. The applicants generally contested the Governments submission.

### 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 applicants and of the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

35. Having regard to the fact that the court had to obtain expert evidence, the Court considers that the case was of some complexity. However, this in itself cannot justify the entire length of the proceedings in question.

36. As regards the conduct of the applicants, the Court notes that several hearings were adjourned at their request, since the friendly settlement negotiations were ongoing. Nevertheless, it observes that the resulting delay was about ten months. In the light of the overall length of the proceedings, the Court considers that the applicants cannot be held responsible for the delays in the trial.

37. As regards the conduct of the national authorities, the Court notes that there were two significant periods of total inactivity on the part of the courts, amounting to over 3 years and 7 months. The first occurred between 18 May 1994 and 21 June 1996; the second between 30 June 2000 and 11 January 2002, in the proceedings before the Supreme Court. The Court considers that these delays are not explained satisfactorily in the Government's observations.

38. Consequently, the Court holds that the applicants' case was not heard within a reasonable time. 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 claimed 122,154.86 euros (EUR) in respect of pecuniary damage.

Under the head of non-pecuniary damage, the applicant claimed a sum of 60,000 EUR.

41. The Government submitted that the applicants' claims were excessive.

42. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore sees no reason to make any award under the head of pecuniary damage. On the other hand, it considers that the applicants certainly suffered non-pecuniary damage, such as distress and frustration resulting from the excessive length of the proceedings. Accordingly, taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicants 3600 EUR in respect of non-pecuniary damage.

### B. Costs and expenses

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

### C. Default interest

44. 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;

3. *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 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS  
Deputy Registrar

Nicolas BRATZA  
President