



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

FOURTH SECTION

CASE OF KRUK v. POLAND

(Application no. 67690/01)

JUDGMENT

STRASBOURG

5 October 2004

FINAL

02/02/2005

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 Kruk v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs V. STRÁŽNICKÁ,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM,

Ms L. MIJOVIĆ,

Mr D. SPIELMANN, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 14 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 67690/01) 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 a Polish national, Mrs Michalina Kruk ("the applicant"), on 2 October 2000.

2. The Polish Government ("the Government") were represented by their Agents, Ms S. Jaczewska, and subsequently, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. 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

4. The applicant was born in 1939 and lives in Ołdrzychowice, Poland.

A. Facts before 1 May 1993

5. On 2 April 1985 the applicant applied to the Wrocław District Commission for Mining Damages (*Okręgowa Komisja do spraw Szkód Górniczych*) for compensation for damage caused to her house.

6. On 25 September 1985 the Commission dismissed her application.

7. The applicant appealed against this decision. Subsequently, on 7 July 1987 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) and on 24 August 1988 the Appellate Commission for Mining Damage (*Odwoławcza Komisja do spraw Szkód Górniczych*) quashed previous decisions given in the case.

8. On 7 April 1992 the District Commission for Mining Damage gave its decision in which it partly allowed the applicant's action. The applicant appealed against this decision.

B. Facts after 1 May 1993

9. On 8 December 1993 the Wrocław Regional Commission held a hearing.

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

11. Accordingly, the applicant's case was transferred to the Świdnica Regional Court (*Sąd Wojewódzki*).

12. The first hearing was held on 24 April 1995. The court ordered that an expert opinion be prepared. The opinion was submitted to the court on 26 April 1996.

13. Subsequently, hearings were held on 18 November 1996, 17 March and 19 September 1997, 13 February 1998 and 10 February 1999. The court ordered several new expert opinions.

14. On 17 February 1999 the Świdnica Regional Court gave judgment in which it dismissed the applicant's action.

15. On 10 March 1999 the applicant lodged an appeal against this judgment.

16. On 11 May 1999 the Wrocław Court of Appeal quashed the impugned judgment and remitted the case.

17. On 1 October 1999 the Świdnica Regional Court held a hearing. The trial court ordered that new expert opinions be prepared. The hearing scheduled for 19 January 2000 was adjourned.

18. At the hearing held on 16 February 2000 the Świdnica Regional Court gave judgment. The court partly allowed the applicant's action and granted her compensation.

19. The applicant lodged an appeal against this judgment.

20. On 31 May 2000 the Wrocław Court of Appeal dismissed her appeal.

THE LAW

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

21. The applicant complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, that the length of the proceedings had been incompatible with the “reasonable time” requirement.

22. The Government contested that argument.

23. The Court considers that the complaint should be examined under 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...”

24. 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. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question ended on 31 May 2000 with the Wrocław Court of Appeal’s decision. It thus lasted seven years and one month.

A. Admissibility

25. The Court notes that the 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.

B. Merits

26. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

27. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

28. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant

case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 41,751 Polish zlotys (PLN) in respect of pecuniary and PLN 88,000 in respect of non-pecuniary damage.

31. The Government contested these claims.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant 3,600 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant also claimed PLN 250 for the costs and expenses incurred before the domestic courts.

34. The Government submitted that they could not bear any responsibility for the costs and expenses incurred by the applicant during the proceedings before the domestic courts.

35. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court dismisses this claim.

C. Default interest

36. 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 remainder of the application admissible;
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 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;
 - (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 5 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President