



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

FOURTH SECTION

CASE OF DUDEK v. POLAND

(Application no. 2560/02)

JUDGMENT

STRASBOURG

5 October 2004

FINAL

05/01/2005

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 Dudek 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. 2560/02) 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, Mr Henryk Dudek ("the applicant"), on 28 December 2001.

2. The Polish Government ("the Government") were represented by their Agent, Mr Jakub 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 President of the Chamber further gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

4. The applicant was born in 1920 and lives in Katowice, Poland.

I. THE CIRCUMSTANCES OF THE CASE

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. Since 1965, the applicant's relatives, Z.D. and L.D, have occupied a part of the applicant's property, with the agreement of the applicant. It

appears that Z.D. and L.D. carried out construction work on the property which provoked a conflict between them and the applicant.

7. On 4 January 1994 the applicant lodged a civil action with the Katowice District Court (*Sąd Rejonowy*) in which he asked the court to order the eviction of Z.D. and L.D from his property.

8. On 31 January 1994 the trial court held a hearing at which it gave a default judgment (*wyrok zaoczny*). The court allowed the applicant's action and ordered that the judgement be immediately enforceable.

9. The defendants lodged an objection against the judgment.

10. On 7 March 1994 the Katowice District Court held a hearing at which it allowed the applicant's motions to hear witnesses and to hold a viewing of the property. Subsequently, the trial court requested a copy of the case-file concerning another set of civil proceedings instituted by the defendants against the applicant.

11. On 27 April 1994 the court decided to stay the proceedings until the termination of the second set of proceedings, instituted by the defendants, in which they claimed that they had acquired the title to the property in question by prescription (*stwierdzenie nabycia własności poprzez zasiedzenie*).

12. The applicant appealed against the decision to stay the proceedings; however, on 6 July 1994 the Katowice Regional Court dismissed his appeal.

13. Subsequently on several occasions, the applicant applied to resume the proceedings.

14. In August 1994, February 1995, February, June, October and December 1996 and May 1997 the trial court requested the Second Division of the Katowice District Court to provide information concerning the state of the proceedings concerning the acquisition of property by prescription.

15. On 10 October 1997 the applicant applied to resume the proceedings. He submitted that the second set of proceedings for acquisitive prescription had ended on 24 September 1997 with the second-instance court's decision.

16. On 15 October 1997 the Katowice District Court allowed his application and resumed the proceedings.

17. At the hearing held on 9 December 1997 the defendants informed the court that the second set of proceedings was still pending because they had lodged a cassation appeal. Consequently, on 12 January 1998, the District Court again decided to stay the proceedings.

18. The applicant appealed against this decision, but on 23 March 1998 his appeal was rejected as he had failed to pay the fees for the appeal.

19. Subsequently, the applicant applied to the court to issue a writ of enforcement of the default judgment of 31 January 1994. On 22 May 1998 the Katowice District Court dismissed his application on the grounds that the proceedings were stayed.

20. The applicant lodged an appeal against this decision.

21. On 8 October 1998 the Katowice Regional Court (*Sąd Wojewódzki*) quashed the decision of 22 May 1998 and remitted the application concerning the writ of enforcement for reconsideration.

22. On 11 January 1999 the applicant applied to resume the proceedings. He submitted that the second set of the proceedings had ended with the Supreme Court's decision of 14 October 1998.

23. On 12 January 1999 the court allowed the application and resumed the proceedings.

24. On 26 February 1999 the Katowice District Court held a hearing and gave judgment. It upheld the default judgment of 31 January 1994 and suspended the enforcement order.

25. The defendants lodged an appeal against the judgment with the Katowice Regional Court.

26. On 17 December 1999 the appellate court stayed the proceedings because the defendants had instituted yet another set of proceedings against the applicant. They sought a judgment stipulating that the applicant was obliged to make a declaration of will (*oswiadczenie woli*) in the form of a consent to the sale of the property in question. The Regional Court found that the proceedings for eviction should be stayed as the determination of the case depended on the outcome of this third set of proceedings.

27. In March 2001 the applicant applied to resume the proceedings.

28. Several times in 2001 and 2002 the trial court requested information regarding the state of the third set of proceedings. Apparently, they were still pending at the time.

29. On 6 March 2003 the Katowice Regional Court was informed that the third set of proceedings had ended. As a result, on 10 March 2003, the court resumed the eviction proceedings.

30. On 10 March 2003 the court held a hearing at which it appointed a lawyer under the legal aid scheme for the defendants.

31. On 28 August 2003 the Katowice Regional Court gave judgment in which it dismissed the defendants' appeal.

32. It appears that subsequently the defendants tried to re-open the proceedings.

II. RELEVANT DOMESTIC LAW

33. Under Sections 173 et seq. of the Code of Civil Procedure the court may stay civil proceedings either *ex officio* or at the parties' request.

34. Section 177 § 1 of the Code, in so far as relevant, provides:

“1. The court shall *ex officio* stay the proceedings:

1) if the determination of the case depends on the outcome of other pending civil proceedings;”

35. Section 180 para. 1 of the Code, insofar as relevant, provides:

“1. The court shall ex officio resume the proceedings if the reason for staying them has ceased to exist, in particular when:

4) a final decision has been given in the proceedings on whose outcome the determination of the claim depends; however, if it is justified, the court may resume the proceedings before [any such decision is taken].”

THE LAW

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

36. The applicant 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...”

37. The Government contested that argument.

38. The period to be taken into consideration began on 4 January 1994 when the applicant instituted the proceedings and ended on 28 August 2003 with the Katowice Regional Court’s judgment. The proceedings thus lasted nine years, seven months and twenty four days.

A. Admissibility

39. 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. The Court therefore declares it admissible.

B. Merits

40. 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 and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999). Furthermore, the Court notes that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each

of its requirements, including the obligation to decide cases within a reasonable time (see, among other authorities, the *Duclos v. France* judgment of 17 December 1996, *Reports* 1996-VI, pp. 2180–81, § 55 *in fine*).

41. 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 and *Uthke v. Poland*, no. 48684/99, § 60, 18 June 2002).

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

43. The applicant appeared to further complain, under Articles 3 and 6 of the Convention, that the proceedings were unfair and that he was treated by the judges in a degrading manner.

44. However, the Court notes that the applicant’s assertions about the violations of the above provisions of the Convention are wholly unsubstantiated.

45. It follows that this part of the application 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

46. 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

47. The applicant claimed 60,000 Polish zlotys (PLN) in respect of pecuniary and damage. He did not claim any particular sum in respect of non-pecuniary damage, however, he requested the Court to grant him just

satisfaction given the detriment suffered by him on account of the length of the proceedings in his case.

48. 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.

49. 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).

50. 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 proceedings. Accordingly, the Court considers that, in the particular circumstances of the instant case and deciding on equitable basis, the applicant should be awarded 5,000 euros (EUR) under the head of non-pecuniary damage.

B. Default interest

51. 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 5,000 (five 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 5 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President