



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

FOURTH SECTION

CASE OF ZAŚKIEWICZ v. POLAND

(Application nos. 46072/99 and 46076/99)

JUDGMENT

STRASBOURG

30 November 2004

FINAL

30/03/2005

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 Zaśkiewicz v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr G. BONELLO,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

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

Having deliberated in private on 9 November 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in the applications (nos. 46072/99 and 46076/99) 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 an Polish national, Mr Janusz Zaśkiewicz ("the applicant"), on 3 November 1998.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Mr J. Wołasiewicz.

3. The applicant alleged, in particular, that the proceedings against company X exceeded a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 17 June 2003 the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 21 February 1994 the applicant filed with the Łódź Regional Court (*sąd wojewódzki*) an action in which he claimed damages from one of his partners in a partnership allegedly responsible for a sale of the partnership's property without the applicant's prior approval. He sued also a certain company X which had purchased that property.

9. On 10 March 1994 the court exempted the applicant from court fees.

10. On 14 March 1994 it refused the applicant's request for an interim measure. His appeal against that decision was dismissed on 16 May 1994 by the Łódź Court of Appeal (*sąd apelacyjny*).

11. On 5 May 1994 the applicant submitted pleadings with a ninety-five-page annex. In July and October 1994, as well as in December 1995, he submitted further pleadings and requested the summoning of five witnesses.

12. The Regional Court held a hearing on 11 January 1996. It completed the examination of the case and informed the parties that it would pronounce its judgment on 25 January 1996. Subsequently, the applicant submitted pleadings containing motions concerning evidence. On 25 January 1996 the court resumed the examination of the case.

13. The hearing scheduled for 27 February 1996 was adjourned because of the absence of a lay judge.

14. On 27 March 1996 the court held a hearing.

15. On 10 April 1996 it declared its lack of jurisdiction over the applicant's claims in respect of his partner and transferred that part of the case to the Łódź District Court (*sąd rejonowy*).

16. The Regional Court held hearings on 26 November 1996, as well as on 29 January, 1 April and 23 July 1997. It ordered an expert opinion.

17. On 15 September 1997 the court refused the applicant's request for an interim measure.

18. The expert opinion was submitted on 5 February 1998.

19. Subsequently, the applicant challenged that opinion.

20. At the hearing held on 11 May 1998 the court ordered a supplementary expert opinion.

21. At the hearing of 25 June 1998 the court completed the examination of the case.

22. Subsequently, the applicant filed a petition in which he complained about certain errors in the minutes from that hearing. On 7 July 1998 the court issued a decision concerning those errors.

23. On 6 July 1998 the applicant submitted pleadings. On 9 July 1998 the court resumed the proceedings and requested the applicant to specify his claim.

24. In September 1998 the applicant requested the court to summon a customs office to join the proceedings as an intervener for the applicant.

25. At the hearing held on 9 November 1998 the court dismissed that request. The applicant requested the written reasoning of that decision. On 18 November 1998 his request was rejected as not provided for by the law.

26. On 19 November 1998 the court gave judgment. It awarded the applicant 32,345.23 Polish zlotys with interest. Both the applicant and the defendant company appealed.

27. The Łódź Court of Appeal held hearings on 9 April and 1 June 1999.

28. On 15 June 1999 it gave judgment. The court amended the judgment of the first-instance court in that it dismissed the action filed by the applicant. He received a copy of the written reasoning of that judgment on 4 April 2000. On 4 May 2000 the applicant lodged with the Supreme Court a cassation appeal against that judgment.

29. On 16 January 2002 the Supreme Court dismissed that appeal.

THE LAW

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

30. The applicant complained that the length of the proceedings was 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...”

A. The Parties' submissions

31. The Government were of the opinion that the case at issue had been rather complex. They made reference to an expert opinion supplemented by another one. They submitted that the applicant had contributed in part to the prolongation of the proceedings by his numerous procedural requests, concerning, *inter alia*, exemption from court costs, the appointment of a court expert and the correction of minutes. They noted that already after the completion of the examination of the case, the applicant had submitted pleadings, which necessitated the resumption of the proceedings. The Government observed that he had changed his claims in the course of the proceedings. They were of the view that the authorities had conducted the procedure with due diligence and had attempted to accelerate the

preparation of an expert opinion by fixing a time-limit for the expert concerned.

32. The applicant pointed out that excessive periods of inactivity had occurred in the course of the proceedings. He mentioned, *inter alia*, the periods between 16 May 1994 and 11 January 1996, as well as between 10 April and 26 November 1996. The applicant noted that the preparation of an expert opinion took almost 16 months, from 23 July 1997 to 9 November 1998, and that he had had to wait for the written reasoning of the Court of Appeal's judgment from 15 June 1999 to 4 April 2000. The applicant submitted that the case had been simple and that his conduct had not prolonged the proceedings.

B. The Court's assessment

1. Period to be taken into consideration

33. The Court notes that the proceedings began on 21 February 1994 and ended on 16 January 2002. They therefore lasted 7 years, 10 months and 23 days.

2. Reasonableness of the length of the proceedings

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).

35. The Court agrees that the case disclosed a degree of complexity.

36. As regards the applicant's conduct, the Court agrees with the Government's opinion that the applicant contributed to the delay. The applicant's numerous and, at times, voluminous pleadings, as well as the changes of his claim undoubtedly prolonged the examination of the case.

37. Nonetheless, the Court observes that significant periods of inactivity occurred in the proceedings at issue, for instance: no action was taken by the domestic courts between 16 May 1994 and 11 January 1996 (almost 1 year and 8 months), as well as between 4 May 2000 and 16 January 2002 (1 year, 8 months and 12 days).

38. Even assuming that delays in the procedure before the Supreme Court can be explained as resulting from the pending reform of the cassation procedure in Poland (see, *Kępa v. Poland* (dec), no. 43978/98, 30 September 2003), the Court, assessing the circumstances of the case and

having regard to the overall duration of the proceedings, finds that the “reasonable time” requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant sought an award of PLN 1,176,450. He submitted that this amount included, *inter alia*, the value of the property that had been damaged or that the applicant had lost as an allegedly unfair result of the proceedings. He also claimed PLN 1,176,450 for non-pecuniary damage. This amount related to suffering and distress caused by the excessive duration of the proceedings. The applicant did not supply any documents confirming these costs and expenses.

42. The Government submitted that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention.

43. 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 her under that head (see, *mutatis mutandis Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

44. The Court further considers that the applicant 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 applicant a total sum of EUR 2,300 under that head.

B. Costs and expenses

45. The applicant also claimed PLN 3,310 for the costs and expenses incurred before the domestic courts and PLN 5,350 for the costs and expenses in connection with the proceedings before the Court.

46. The Government submitted that the legal costs and expenses claimed by the applicant were partly irrelevant to the proceedings at issue. The Government recalled that only the costs actually incurred in the preparation and defence of the applicant's case before the Court, not before the domestic courts, could be taken into consideration.

47. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. To be recoverable, the domestic costs and expenses must also be incurred to prevent or obtain redress for the violation found.

48. On the basis of the information in its possession, the Court finds no indication that in the present case any of the domestic costs and expenses claimed by the applicant had been incurred by him for this purpose.

49. The Court notes that the applicant was not represented by a lawyer in the proceedings before it. Making its own assessment on the material before it, the Court awards the applicant EUR 120 for translation and copying expenses which he incurred in the context of filing and pursuing his application.

C. Default interest

50. 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. *Holds* that there has been a violation of Article 6 of the Convention;
2. *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 2,300 (two thousand and three hundred euros) in respect of non-pecuniary damage and EUR 120 (one hundred and twenty euros) in respect of costs and expenses, plus any tax that may be chargeable on the above amounts, to be converted into Polish zlotys at a 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President