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

FOURTH SECTION

CASE OF DAŃCZAK v. POLAND

(Application no. 57468/00)

JUDGMENT

STRASBOURG

21 December 2004

FINAL

21/03/2005

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 Dańczak v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 30 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 57468/00) 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, Mr Jan Dańczak (“the applicant”), on 24 May 1999.

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

3. The applicant alleged, in particular, that the length of civil proceedings in his case had been excessive.

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. By a decision of 4 May 2004 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lives in Sapy, Poland.

A. Facts prior to 1 May 1993

7. On 17 July 1992 the applicant lodged with the Skierniewice Regional Court (*Sąd Wojewódzki*) an action for damages against his neighbours. He claimed that the defendants had caused damage to his barn by improperly storing silage and animal waste.

8. In 1992 two hearings were adjourned.

9. On 16 February 1993 the court held a hearing at which it heard the parties and witnesses and ordered an expert opinion.

B. Facts after 30 April 1993

10. On 3 August 1993 an expert submitted his opinion to the court. The defendants' lawyer contested the expert's opinion.

11. A hearing scheduled for 17 September 1993 was adjourned due to the absence of the defendants' lawyer.

12. On 14 October 1993 the court held a hearing and heard an expert witness.

13. On an unknown later date, at the applicant's lawyer's request, the court ordered another expert opinion. In January 1994 the opinion was submitted to the court. Subsequently, the defendants' lawyer requested the court to order a supplementary expert opinion.

14. On 29 March 1994 the court held a hearing. It heard two witnesses and an expert witness.

15. Subsequently, the defendants' lawyer requested the court to order yet another expert opinion.

16. In August 1994 the applicant's and the defendants' lawyers requested the court not to schedule any hearings until 30 September 1994 because of their respective holidays.

17. On 8 December 1994 the court dismissed the defendants' request for exemption from the court fees. They lodged an appeal but on 9 January 1995 the Łódź Court of Appeal dismissed it.

18. In May 1995 the trial court asked the defendants to indicate an expert who would prepare an opinion.

19. Two subsequent hearings scheduled for 31 January and 23 February 1996 were adjourned due to the illness of the defendants and their lawyer.

20. On 10 July 1996 the court, sitting *in camera*, ordered another expert opinion.

21. On 6 August 1996 the defendant's lawyer requested the court to appoint two other experts indicated by him. On 15 November 1996 the trial court dismissed this application.

22. On 17 March 1997 an expert opinion was submitted to the court.

23. In June 1997 the case was assigned to another judge.

24. Subsequently, the applicant's lawyer requested the court not to schedule any hearings until 30 August 1997 because of his holidays.

25. On 8 September 1997 the court stayed the proceedings because one of the defendants had died. Later, his heirs joined the proceedings.

26. On 21 January 1998 the trial court resumed the proceedings and sent the case-file to an expert in order to obtain an opinion.

27. On 20 March 1998 the expert submitted his opinion to the court.

28. Between 30 March 1994 and 5 May 1998 no hearings were held.

29. On 6 May 1998 the court held a hearing.

30. On 15 July 1998 the applicant's lawyer again requested the court not to schedule hearings during his holidays.

31. A hearing scheduled for 30 October 1998 was adjourned due to the absence of the defendants' lawyer.

32. In December 1998 the defendants' lawyer requested the court not to schedule any hearings between 1 December and 20 December 1998, and subsequently, until 1 February 1999.

33. A hearing scheduled for 8 February 1999 was adjourned because of the absence of the defendants' lawyer.

34. Between 7 May 1998 and 17 March 1999 no hearings were held.

35. On 18 March 1999 the court held a hearing.

36. On 31 March 1999 the Regional Court gave judgment in which it dismissed the applicant's claim.

37. The applicant lodged an appeal against the judgment.

38. On 21 October 1999 the Łódź Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal and upheld the first-instance judgment.

THE LAW

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

39. The applicant complained that the length of the proceedings in his case exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention, which reads in so far as relevant:

> “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 this view.

A. Period to be taken into consideration.

41. The period to be taken into consideration began 17 July 1992 and ended on 21 October 1999 with the Łódź Court of Appeal's judgment. They therefore lasted seven years and three months, out of which a period of six

years, five months and twenty-one days falls within the Court's jurisdiction *ratione temporis*.

B. Reasonableness of the length of the proceedings

1. The Government's submissions.

42. The Government submitted that the case had been complex. They referred in particular to the number of expert opinions obtained by the domestic court.

43. As regards the conduct of the authorities the Government submitted that the domestic courts acted diligently and that there were no periods of inactivity for which they could be held responsible. The Government acknowledged that "the certain prolongation of the proceedings was caused by a change of the judge rapporteur".

44. The Government further argued that the applicant contributed to a certain degree to the length of the proceedings. They referred to the fact that on four occasions his lawyer requested the court not to schedule any hearings during his holidays. The Government were of the opinion that the other party to the proceedings contributed significantly to the length of the proceedings.

2. The applicant's submissions

45. The applicant disagreed with the Government's submissions and argued that the proceedings exceeded a reasonable time.

46. The applicant further argued that he had not contributed to the delay and submitted that he had repeatedly requested the court not to appoint new experts.

3. The Court's assessment

47. 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, *Humen v. Poland* [GC], § 60, no. 26614/95, 15 October 1999).

48. As regards the conduct of the domestic authorities the Court observes that several substantial periods of inactivity occurred in the course of the proceedings. In particular, during the period between March 1994 and March 1999 the trial court held only one hearing on 6 May 1998 (see paragraphs 28, 29 and 34 above). While it is true that during this period the court took some action, in particular, it dismissed an application for

exemption from the court fees and ordered new expert opinions, this does not explain the totality of the delay. In this context the Court notes that the expert's work in the context of judicial proceedings is supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44).

49. 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).

50. 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.

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

II. 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 600,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 100,000 in respect of non-pecuniary damage.

54. The Government submitted that the applicant's claims were exorbitant.

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 on account of the protracted length of the proceedings. Accordingly, the Court considers that, in particular circumstances of the instant case and deciding on an equitable basis, the applicant should be awarded 4,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant also claimed PLN 8,503 for the costs and expenses incurred before the domestic courts.

58. The Government did not comment on the applicant's claim.

59. 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

60. 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 § 1 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 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of the settlement, plus any tax that may be chargeable on the above amount;

   (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;

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

Done in English, and notified in writing on 21 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President