



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

FOURTH SECTION

CASE OF WOJTKIEWICZ v. POLAND

(Application no. 45211/99)

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 Wojtkiewicz v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 30 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 45211/99) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Wilhelm Wojtkiewicz (“the applicant”), on 9 September 1998.

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

3. The applicant alleged that the proceedings in his case exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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.

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

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

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1954 and lives in Bochnia, Poland. He works as a notary.

10. On an unspecified day in March 1991 a certain Mr X filed with the Bochnia District Court a request that the co-ownership of an estate be dissolved.

11. The court held hearings on 30 July 1991, 12 May 1992, 9 March 1993, 29 April 1994, 26 April 1995 and 8 May 1996.

12. On 29 August 1996 the applicant purchased a share in that estate.

13. On 6 September 1996 he requested the court to allow him to participate in the proceedings.

14. On 12 September 1996, as a party to the proceedings, he requested the court to appoint a guardian *ad litem* for those co-owners whose place of residence was not known and for the heirs of a late co-owner. The applicant further raised a claim to establish the title to the disputed property and to evict two individuals.

15. On 16 October 1996 the court granted the applicant leave to participate in the proceedings.

16. In November 1996 the case was transferred to the Kraków Nowa-Huta District Court.

17. Hearings were held on 4 February and 26 March 1997.

18. On 26 March 1997 the court refused to allow the former co-owners of the applicant's share to participate in the proceedings. On 30 September 1997 the Kraków Regional Court dismissed an appeal against that decision lodged by Mr X.

19. The District Court held hearings on 11 December 1997, as well as on 5 February and 3 December 1998.

20. On 28 February 1998 it refused certain co-owners' request for an interim measure. They appealed and on 21 July 1998 the Regional Court quashed that decision and ordered the re-examination of the request. On 9 and 28 October 1998 the District Court ordered interim measures.

21. On 20 February 1999 the court stayed the proceedings, considering that it was first necessary to carry on inheritance proceedings concerning the estate of a late co-owner in order to establish the identity of the heirs and their shares in the estate. The applicant and certain other co-owners appealed and on 18 June 1999 the Kraków Regional Court quashed that decision. In its decision it also ordered the District Court to exclude from those proceedings the issue of the ownership title to the estate and to initiate separate proceedings in this respect. It considered that in the light of a suspicion that Mr X and certain other participants in the proceedings could

not be co-owners of the estate it was necessary to establish who had the genuine ownership title to the share allegedly owned by them.

22. The District Court carried out that order on 5 October 1999. On 11 October 1999 the court stayed the proceedings concerning the dissolution of the co-ownership until the proceedings concerning the establishment of the title to the disputed share were completed.

23. On 2 December 1999 the Kraków Nowa-Huta District Court declared its lack of jurisdiction over the case and transferred it to the Tarnów Regional Court.

24. On 7 December 1999 the District Court refused the applicant's request, lodged on 12 September 1996, to appoint a guardian *ad litem*. On 17 March 2000 the Kraków Regional Court quashed that decision and ordered the re-examination of the request.

25. On 22 January 2001 the Kraków Court of Appeal, on the request of one of the defendants, excluded the judges of the Tarnów Regional Court from participation in the proceedings concerning the establishment of ownership title. The court found, *inter alia*, that the applicant used to work as a judge on that circuit and was acquainted with the judges of that court.

26. On 22 March 2001 the Kraków Regional Court held a hearing, at which it decided to examine the case-file of the proceedings concerning the dissolution of the co-ownership and consider whether the case dealt with by it could be joined to those proceedings.

27. On 11 June and 11 October 2001 the court held hearings.

28. On the latter date it gave judgment. The court dismissed the applicant's claim. He and other plaintiffs appealed.

29. On 15 March 2002 the Kraków Court of Appeal quashed the judgment of the Regional Court and remitted the case for re-examination.

30. On 19 December 2003 the Kraków Regional Court gave a final judgment.

THE LAW

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

31. The applicant complained that the proceedings in his case had exceeded a reasonable time, within the meaning of Article 6 § 1 of the Convention, which provides, 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...”

A. The parties' submissions

32. The Government submitted that the case at issue had been very complex because of difficulties in establishing the ownership title to the disputed property. They further noted that there had been up to 14 participants in the proceedings, a number of them living abroad. The Government observed that certain documents had to be translated and the participation of certain judges had to be challenged because of their relations with the applicant. They claimed that the proceedings had been conducted with due diligence. The Government were of the view that the applicant had not significantly contributed to the delay.

33. The applicant agreed that the case had been complex. He noted, however, that its examination had been based solely on documents, no witnesses being heard or expert opinions ordered. As regards the difficulties allegedly caused by his relations with certain judges, the applicant submitted that the delay relating to the necessity to exclude them from the proceedings had been of no more than 4 months. The applicant pointed out that when he had joined the proceedings they had already lasted over 5 years. He was of the opinion that hearings had been scheduled with too long intervals. The applicant observed that the translation of documents had been ordered only once, in 1992.

B. The Court's assessment

1. Period to be taken into consideration

34. The Court notes that the proceedings began in March 1991 and ended on 19 December 2003. They therefore lasted about 12 years and 9 months. However, the applicant joined them on 6 December 1996 and participated in them for 7 years, 3 months and 13 days.

2. Reasonableness of the length of the proceedings

35. 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; *Zwierzyński v. Poland*, no. 34049/96, 19 June 2001, § 41; *Zawadzki v. Poland*, no. 34158/96, 20 December 2001, § 69).

36. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

37. The Court notes that the manner in which the applicant exercised his procedural rights did not contribute to the length of the proceedings.

38. As regards the conduct of the authorities, the Court observes that intervals between hearings were too long. After the quashing of the first-instance court's judgment the case returned to the initial stage, while the main set of proceedings remained stayed. This made the applicant's chances to have his case completed in the near future very limited.

39. Consequently, having regard to the overall duration of the proceedings and the fact that they were conducted only by two judicial instances, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 24,750 Polish zlotys (PLN) as compensation for pecuniary damage. He submitted that the sum claimed by him consisted of compensation for both the costs and expenses incurred before the domestic courts and 31 working days as a notary he allegedly had lost while preparing and pursuing the case.

43. He also claimed PLN 50,000 in respect of non-pecuniary damage. He submitted that this amount related to suffering and distress caused by the excessive duration of the proceedings.

44. The Government were of the view that the amounts claimed by the applicant were exorbitant, unjustified and unfounded. They pointed out that there was no causal link between the pecuniary damage allegedly sustained by the applicant and the length of the proceedings. The Government considered that finding a violation in the case at issue would provide in itself just satisfaction.

45. 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 Kudla v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

46. 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 3,800 under that head.

B. Costs and expenses

47. The applicant claimed PLN 7,700 for the costs and expenses incurred before the Court.

48. The Government submitted that only the costs actually incurred in the preparation and defence of the applicant's case before the Court could be taken into consideration.

49. 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 they have been actually and necessarily incurred and are reasonable as to quantum. In the present case, in the light of the information in its possession, the Court awards the applicant EUR 100 for incidental costs and 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 § 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 3,800 (three thousand eight hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred 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 21 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President