



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

FOURTH SECTION

CASE OF KREUZ v. POLAND (No. 3)

(Application no. 75888/01)

JUDGMENT

STRASBOURG

24 January 2006

FINAL

24/04/2006

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 Kreuz v. Poland (no. 3),

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

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

Having deliberated in private on 5 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 75888/01) 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, Mr Henryk Kreuz ("the applicant"), on 9 March 2001.

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

3. On 20 June 2003 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Płock, Poland.

5. On 7 March 1992 the applicant asked the Częstochowa District Court (*Sąd Rejonowy*) for a payment order against the "Westa" insurance company.

6. The court refused the application on 22 June 1992.

7. On 15 September 1992, on the applicant's appeal, the Częstochowa Regional Court (*Sąd Wojewódzki*) remitted the case.

8. On 15 December 1992 the District Court upheld its original decision.
9. On 25 March 1993 the Częstochowa Regional Court dismissed the applicant's further appeal.
10. The case was subsequently examined by the District Court in ordinary civil proceedings.
11. On 7 July 1993 the court stayed the proceedings because bankruptcy proceedings had been initiated against the defendant (that decision is obligatory under Polish civil procedure).
12. On 14 December 1993 the Regional Court dismissed the applicant's appeal against that decision.
13. The applicant unsuccessfully asked the court several times to resume the proceedings.
14. The court resumed the proceedings on 13 September 1996.
15. Hearings were scheduled for 23 October 1996 and 8 July 1997.
16. On 4 August 1997 the court ordered that expert evidence be obtained. It also ordered the applicant to pay an advance sum of money to cover the costs of the preparation of an expert report.
17. On 16 April 1998 the court stayed the proceedings because the applicant had not paid the advance sum required.
18. The applicant appealed against that decision. He maintained that, according to the established case-law of the Supreme Court (*Sąd Najwyższy*), a party's failure to pay in advance costs of an expert opinion is not a sufficient ground for staying the proceedings.
19. On 29 July 1998 the Regional Court dismissed the appeal.
20. On 30 September 1999 the District Court resumed the proceedings and, on the same day, partly granted the applicant's claim.
21. On 12 September 2000 the Regional Court amended the first-instance judgment and partly granted the claim. Due to the value of the claim a cassation appeal was not available in this case.

THE LAW

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

22. 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..."

23. The Government contested that argument.

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 12 September 2000. It thus lasted 7 years, 4 months and 14 days for two levels of jurisdiction.

A. Admissibility

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

29. The applicant alleged a breach of Article 6 § 1 in that he did not have a “fair trial”. He alleged that the courts committed errors of fact and law when dealing with his case.

30. The Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the States Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court, unless

and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no 30544/96, ECHR 1999-I, § 28). The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing or any specific shortcomings on the part of the relevant courts. In the light of the material in its possession, the Court finds no indication that the impugned proceedings were unfairly conducted.

31. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 31,428 Polish zlotys (PLN)¹ and 9447 euros (EUR) in respect of pecuniary damage. He further claimed EUR 20,000 in respect of non-pecuniary damage.

34. The Government contested these claims.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3000 under that head.

B. Costs and expenses

36. The applicant did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

¹ Approximately EUR 7,844

C. Default interest

37. 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 excessive 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;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of 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 24 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President