



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

FOURTH SECTION

CASE OF KRZYCH AND GURBIERZ v. POLAND

(Application no. 35615/03)

JUDGMENT

STRASBOURG

13 February 2007

FINAL

09/07/2007

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 Krzych and Gurbierz v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Mrs L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 23 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 35615/03) 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 two Polish nationals, Mr Władysław Krzych and Mr Tadeusz Gurbierz (“the applicants”), on 31 October 2003.

2. The Polish Government (“the Government”) were represented by their Agent, Agent Mr J. Wołaszewicz of the Ministry of Foreign Affairs.

3. On 1 September 2005 the President of the Fourth Section decided to communicate the applicant’s complaint concerning the length of 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1942 and 1946 respectively and live in Rybnik, Poland.

5. In 1992 and 1993 the prosecutor conducted an investigation in connection with the applicants’ allegedly illegal business activities.

6. On 16 December 1993 they were charged with fraud.

7. In July 1994 the applicants were indicted before the Katowice Regional Court (*Sąd Wojewódzki*).

8. On 18 October 1994 the trial court held the first hearing.

9. In 1995 the court held nine hearings. Some of them were adjourned or cancelled due to the absence of witnesses. In 1996, 1997 and 1998 the trial court scheduled numerous hearings. However, most of them were either adjourned due to the absence of witnesses or cancelled.

10. On 10 December 1998 the Katowice Regional Court gave judgment. The court convicted the applicants and sentenced them to suspended prison terms of one year and six months and two years respectively.

11. The applicants appealed against the judgment.

12. The Katowice Court of Appeal (*Sąd Apelacyjny*) held one hearing on 27 April 2000 and on the same date gave judgment. The court quashed the impugned judgment and remitted the case.

13. On 6 September 2000 the Katowice Regional Court (*Sąd Okręgowy*) held the first hearing.

14. In January 2001 the court decided that the Gliwice Regional Court was competent to examine the case.

15. The trial court held hearings in May, July and November 2001. Subsequently, hearings were held at year-long intervals: in October 2002 and September 2003. The hearing in September 2003 was held before the Racibórz District Court (*Sąd Rejonowy*) to which, in the meantime, the case had been transferred.

16. The Racibórz District Court held several hearings and on 28 September 2004 it gave judgment. The trial court convicted the applicants but reduced the suspended prison terms to which they had been sentenced.

17. The applicants appealed.

18. On 2 November 2004 the applicants lodged with the Katowice Court of Appeal (*Sąd Apelacyjny*) a complaint about a breach of the right to have their case heard within a reasonable time. They relied on the 2004 Act on complaints about a breach of the right to a trial within a reasonable time. On 14 December 2004 the Katowice Court of Appeal dismissed the complaints. The court examined the course of the impugned proceedings only as regards the period between 2002 and 2004 when the case had been pending before the District Court and established that the proceedings had been conducted diligently. It further held that the trial courts could not be held responsible for delays caused by the absence of witnesses or illness of the parties.

19. On 21 February 2005 the Gliwice Regional Court dismissed their appeal against the judgment of 28 September 2004. The judgment is final.

II. RELEVANT DOMESTIC LAW

20. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR

2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 7 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

21. The applicants first complained that the proceedings in their case had been unfair. In particular, they alleged that the courts had committed errors of fact and law. This complaint falls to be examined under Article 6 § 1 of the Convention which, in its relevant part, reads:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

22. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting 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.

23. In the present case the applicants did not allege any particular failure to respect his right to a fair hearing on the part of the relevant courts. Indeed, their complaints are limited to a challenge to their allegedly wrongful conviction. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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.

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

24. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

25. The Government contested that argument.

26. The applicants submitted that they had been charged on 16 December 1993. The Government did not contest that date. However, they submitted that the proceedings at issue started on 18 October 1994 when the first hearing took place. Having regard to its extensive case-law on the subject, the Court considers that the period to be taken into consideration began on 16 December 1993 when the applicants were charged, and ended on 21 February 2005 when the Gliwice Regional Court dismissed their appeal. It thus lasted 11 years, 2 months and 9 days for two levels of jurisdiction.

A. Admissibility

27. 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

28. 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 applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

29. 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 *Pélissier and Sassi*, cited above). Furthermore, the Court considers that, in dismissing the applicants' complaint that the proceedings in their case had exceeded a reasonable time, the Katowice Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

30. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicants claimed in total over 700,000 Polish zlotys (PLN) in respect of pecuniary damage. They also claimed PLN 54,000 each in respect of non-pecuniary damage.

33. The Government contested their claims.

34. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards each of the applicants 6,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicants also claimed over PLN 80,000 for the costs and expenses incurred before the domestic courts and before the Court.

36. The Government contested these claims.

37. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award to each of the two applicants, who were not represented by a lawyer, the sum of EUR 100 covering costs under all heads.

C. Default interest

38. 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 each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President