



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

FOURTH SECTION

CASE OF WILUSZ v. POLAND

(Application no. 1363/02)

JUDGMENT

STRASBOURG

3 July 2007

FINAL

03/10/2007

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 Wilusz v. Poland,

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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*

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

Having deliberated in private on 16 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 1363/02) 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") on 10 December 2001 by Ms Halina Wilusz and Mr Marian Wilusz ("the applicants").

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

3. On 25 August 2004 the Court decided to give notice of the application 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. In 1972 the State Treasury transferred to the applicants a property situated in Krosno. There was no adequate access by road to the property at that time, but the State authorities declared that an access road would soon be constructed. However, the authorities did not undertake any action to ensure proper access to the applicants' property. In particular, a right of way through neighbouring properties was never created.

5. In 1983 the applicants brought a civil action to have a right of way established by way of a judicial decision. On 31 December 1986 the Krosno District Court allowed their request. Their neighbours appealed.

6. On 27 October 1987 the Krosno Regional Court quashed the judgment of the first-instance court and remitted the case for re-examination, finding that the first-instance court had failed to assess the evidence properly.

7. By a judgment of 23 October 1990 the Krosno District Court again granted a right of way to the applicants. The neighbours brought a new appeal. On 20 June 1991 the Krosno Regional Court quashed the contested judgment and again remitted the case for re-examination.

8. On 3 November 1997 the Krosno District Court allowed the applicants' claim. The Krosno Regional Court dismissed the neighbours' appeal on 6 October 1998. The neighbours brought a cassation appeal before the Supreme Court.

9. The Supreme Court refused to entertain their appeal on 22 June 2001. This decision was served on the applicants on 13 September 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act"), 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.

11. In particular, section 18 of the 2004 Act lays down the following transitional rules in relation to applications already pending before the Court:

"1. Within six months after the date of entry into force of this law persons who, before that date, had lodged a complaint with the European Court of Human Rights ... complaining of a breach of the right to a trial within a reasonable time guaranteed by Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ..., may lodge a complaint about the unreasonable length of the proceedings on the basis of the provisions of this law if their complaint to the Court had been lodged in the course of the impugned proceedings and if the Court has not adopted a decision concerning the admissibility of their case.

2. A complaint lodged under subsection 1 shall indicate the date on which the application was lodged with the Court.

3. The relevant court shall immediately inform the Minister of Foreign Affairs of any complaints lodged under subsection 1."

THE LAW

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

12. 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

13. The Government contested that argument.

14. Although the applicants had filed their claim in 1983, 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.

15. The period to be assessed ended on 13 September 2001, when the applicants were served with the final decision of the Supreme Court. It thus lasted eight years and four months for three levels of jurisdiction.

A. Admissibility

16. The Government raised a preliminary objection that the applicants had not exhausted domestic remedies available to them under Polish law, as required by Article 35 § 1 of the Convention. They maintained that under section 18 of the 2004 Act, within six months after the entry into force of the Act, that is, from 17 September 2004, anyone who had lodged an application with the European Court of Human Rights in due time complaining of a violation of the “reasonable-time” requirement contained in Article 6 § 1 of the Convention was entitled to lodge a length of proceedings complaint provided for by the Act, if the application to the Court had been lodged when the proceedings were still pending and if it had not yet been declared admissible by the European Court.

17. The applicants did not address this point.

18. The Court considers that the applicants did not have at their disposal any effective remedy for the excessive length of the proceedings (*Ratajczyk v. Poland* (dec.), no. 11215/02). This was because the 2004 Act was not applicable to these proceedings as they had ended on 13 September 2001, before the 2004 Act came into force. The application was lodged with the Court after the proceedings had ended. As a result, the Court finds that section 18 of the 2004 Act was not applicable to the applicants' situation.

It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

19. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. 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 applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

21. 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).

22. 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.

23. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicants claimed 285,000 zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

26. The Government contested the claim.

27. 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 the applicants 2,400 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

28. The applicants also claimed 19,423 zlotys (PLN) for the costs and expenses incurred before the domestic courts.

29. The Government contested the claim.

30. 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, the Court considers it reasonable to award the applicants the sum of EUR 100 for the costs and expenses incurred in the Convention proceedings.

C. Default interest

31. 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 application admissible;
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 applicants jointly, 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, plus any tax that may be chargeable:
 - (i) EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
 - (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 3 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President