



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

FOURTH SECTION

CASE OF KYZIOŁ v. POLAND

(Application no. 24203/05)

JUDGMENT

12 February 2008

STRASBOURG

FINAL

07/07/2008

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 Kyziol v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 24203/05) 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 Jarosław Kyzioł (“the applicant”), on 17 June 2005.

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

3. On 7 December 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1969 and lives in Cracow.

1 Civil proceedings for dissolution of co-ownership

5. On 28 October 1994 a housing co-operative filed with the Cracow District Court (*Sąd Rejonowy*) a claim for dissolution of co-ownership of five plots of land. The applicant is one of the co-owners of the land in question and has his family house there. There were 182 parties to the

proceedings at the time when they were first instituted. This number has since increased to 417.

6. On 16 October 1997 the Cracow Regional Court (*Sąd Okręgowy*) decided to join the case in question to a related case involving a claim for the ascertainment of the ownership right to the same land, and to examine them together.

7. On 1 March 1999 the President of the Cracow District Court appointed an expert in geodesy. On 19 July 1999 the court admitted his expert report as evidence. On 1 July 2002 the President of the Cracow District Court requested that the original report be updated. The additional expert report was furnished in June 2003.

8. On 20 November and 18 December 2003 respectively the court decided to exclude two judges from dealing with the case. Moreover, on 18 December 2003 the Cracow District Court decided of its own motion to stay the proceedings due to the deaths of several of the parties, the need to ascertain the shares of their legal heirs and to summon new parties.

9. On 13 April 2006 the Cracow District Court resumed the proceedings since the successors of the deceased parties had been summoned to participate. However, in the same decision the court decided to stay the proceedings due to new circumstances, namely the deaths of other parties.

2. *Proceedings under the 2004 Act*

10. On 15 December 2005 the applicant lodged a complaint about the unreasonable length of proceedings under the Act 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”).

11. On 14 February 2006 the Cracow Regional Court dismissed the complaint. The court held that the 2004 Act did not have retroactive effect and, consequently it examined the applicant’s claim only in respect of the period between the entry into force of the 2004 Act on 17 September 2004 and the date on which the complaint had been lodged by the applicant. The Cracow Regional Court found that the proceedings remained stayed due to the objective obstacle posed by the deaths of several of the parties and the delays caused by their legal heirs in submitting inheritance titles. The domestic court also emphasised that there was a considerable and ever-changing number of parties to the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of 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.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

13. On 28 June 2007 the Government submitted a unilateral declaration similar to that in the case of *Wawrzynowicz v. Poland* (no. 73192/01, 17 July 2007) and informed the Court that they were ready to acknowledge that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which he had been involved. In respect of non-pecuniary damage, the Government proposed to award the applicant 10,000 Polish zlotys (PLN) (the equivalent of 2,600 euros (EUR)). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

14. The applicant did not agree with the Government's proposal. He considered that the amount proposed did not constitute sufficient just satisfaction for the damage he had sustained and requested the Court to continue the examination of the application.

15. The Court has already addressed the issue of unilateral declarations and laid down the criteria for deciding whether or not a case should be struck out under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government (see *Warzynowicz*, cited above, §§ 31-36 and *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, § 74-77, ECHR 2003-VI).

16. The Court notes that it has specified in a number of cases the nature and extent of the obligations which arise for the respondent State under Articles 6 and 13 of the Convention as regards the guarantees of the right to a trial within a reasonable time (see, among many others, *Kusmieriek v. Poland*, no. 10675/02, 21 September 2004, and *Zynger v. Poland*, no. 66096/01, 13 July 2004) and the requirement of an effective remedy capable of providing appropriate redress for the damage resulting from the breach of this right (see *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Krasuski v. Poland*, no. 61444/00, ECHR 2005-... (extracts); *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-...; *Majewski v. Poland*, no. 52690/99, 11 October 2005; and *Cocchiarella v. Italy* [GC], no. 64886/01, ECHR 2006-...). Where the Court has found a breach of these

Articles it has awarded just satisfaction, the amount of which depended on the particular features of the case.

17. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the Government, the Court notes in the first place that the applicant's complaint concerned the excessive length of the civil proceedings. The Court further observes that the proceedings were instituted on 28 October 1994 and since then they have been pending before the first-instance court. On 13 April 2006 the trial court decided to stay the proceedings. Moreover, the relevant Polish remedies against excessive length of proceedings introduced in 2004 proved either not applicable or not effective in the circumstances of the present case (see paragraph 25). Consequently, no other remedy for the alleged violation is possible at this stage.

18. Further, the Court notes that although the Government acknowledged in their unilateral declaration that the domestic proceedings had been unreasonably lengthy, they did not, however, offer him adequate redress. The Court considers that the sum proposed in the declaration in respect of non-pecuniary damage suffered by the applicant as a result of the alleged violation of the Convention does not bear a reasonable relationship to the amounts awarded by the Court in similar cases for non-pecuniary damage (see *Wawrzynowicz*, cited above, §§ 38-40).

19. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

20. The applicant 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..."

21. The Government refrained from raising any argument in this connection.

22. The period to be taken into consideration began on 28 October 1994 and has not yet ended. It has thus lasted over twelve years for one level of jurisdiction.

A. Admissibility

23. 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

24. 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).

25. 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). Furthermore, the Court considers that, in dismissing the applicant's complaint that the proceedings in his case exceeded a reasonable time, the Cracow Regional Court 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).

26. 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

27. 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

28. The applicant claimed PLN 30,000 (the equivalent of EUR 8,400) in respect of non-pecuniary damage.

29. The Government did not express an opinion on the matter.

30. The Court considers that it should award the full amount claimed.

B. Costs and expenses

31. The applicant also claimed PLN 10,000 (the equivalent of EUR 2,600) for the costs and expenses incurred before the domestic courts alone.

32. The Government did not express an opinion on the matter.

33. 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 rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

34. 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. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 8,400 (eight thousand four hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President