



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF HENRYK KOZŁOWSKI v. POLAND

(Application no. 17731/03)

JUDGMENT

STRASBOURG

9 June 2009

FINAL

09/09/2009

This judgment may be subject to editorial revision.

In the case of Henryk Kozłowski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 19 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 17731/03) 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 a Polish national, Mr Henryk Kozłowski (“the applicant”), on 17 May 2003.

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

3. On 30 August 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1943 and lives in Wałbrzych.

A. Proceedings for repossession of the property

1. Facts before 1 May 1993

5. The applicant was the owner of a piece of land in Radomsko. On 12 December 1985 he concluded an arrangement with a co-operative enabling him to begin construction work.

6. On 16 September 1988 the applicant renounced his right to the land and the house which had meanwhile been constructed on it.

7. In consequence, on 4 November 1988 the board of the co-operative stripped the applicant of his membership. The applicant appealed. On 21 November 1988 the supervisory board upheld the decision.

8. On an unspecified date a certain S.B. and his family settled in the applicant's house.

9. On 31 December 1988 the applicant brought an action against S.B. and the co-operative in the Radomsko District Court (*Sąd Rejonowy*), seeking repossession of his property and restoration of his membership of the co-operative.

10. On 30 July 1990 the court allowed the applicant's claim. On 22 November 1990 the Piotrków Trybunalski Regional Court (*Sąd Okręgowy*) dismissed the defendant's appeal.

11. On 8 February 1991 the Radomsko District Court issued a writ of execution in respect of the final judgment.

12. After the judgment became final, the applicant asked the bailiff of the District Court (*Komornik Sądu Rejonowego*) to institute enforcement proceedings.

13. On 27 May 1991 the bailiff, despite the fact that S.B. had not vacated the applicant's house, made an official record of restoration of possession in favour of the applicant (*protokolarne wprowadzenie w posiadanie*).

14. On 18 September 1991 the Radomsko District Court quashed the bailiff's decision and ordered that S.B. be evicted.

15. On 8 May 1992 the District Court bailiff found that it had no competence to deal with the case. The applicant lodged a complaint about the actions taken by the bailiff (*skarga na czynności komornika*). On

5 January 1993 the Radomsko Regional Court dismissed the applicant's complaint.

2. Facts after 1 May 1993

16. As the enforcement proceedings were unsuccessful, on 1 August 1994 the applicant brought an action against S.B. before the Piotrków Trybunalski Regional Court seeking repossession of the property and compensation. On 1 June 2000 the court gave judgment in favour of the applicant and ordered S.B. to return the property.

17. On 13 February 2001 the Łódź Court of Appeal (*Sąd Apelacyjny*) upheld the Regional Court judgment. On 4 April 2001 the Piotrków Trybunalski Regional Court issued a writ of execution in respect of the final judgment.

18. On 23 July 2001 the applicant asked the bailiff of the District Court to institute enforcement proceedings.

19. On 18 September 2001 the bailiff requested S.B. to vacate the property.

20. On 28 November 2001 the bailiff made an unsuccessful attempt to recover possession.

21. On 6 December 2001 the applicant made a further complaint about the actions of the bailiff. On 17 January 2002 the Radomsko District Court dismissed the complaint.

22. On 4 February 2002 the Radomsko District Court again made an official record of restoration of possession in favour of the applicant. The applicant appealed. On 16 April 2002 the Regional Court quashed the District Court's decision.

23. On 17 October 2002 the applicant lodged his third complaint against the actions taken by the bailiff. On 25 November 2002 the District Court ordered the bailiff to secure alternative accommodation for S.B. and his family.

24. On 25 November 2002 the Radomsko District Court ordered the bailiff to guarantee alternative accommodation to S.B. and his family.

25. On 10 March 2003 the bailiff requested the municipal authorities to provide S.B. with alternative accommodation.

26. On 14 March 2003 the municipal authorities informed the bailiff that no social housing was available.

27. On 9 April 2003 the bailiff informed the applicant of the unsuccessful attempt to recover possession.

28. On 26 May 2003 the applicant brought an action against S.B. and his family for repossession of his property. On 23 January 2004 the Radomsko District Court, relying on the principle of *res iudicata*, refused to examine the claim. The court further stated that the lack of alternative accommodation should not be an obstacle to eviction.

29. On 11 February 2004 the bailiff stayed the execution due to the death of S.B. In the meantime, on 13 January 2004, the Radomsko District Court ordered that S.B.'s wife and any other persons in the household be evicted.

30. On 19 February 2004 the applicant submitted to the District Court a complaint about the actions taken by the bailiff (stay of the proceedings). On 17 May 2004 the court rejected the complaint. The applicant appealed. On 13 July 2004 the Piotrków Trybunalski Regional Court dismissed the appeal.

31. On 28 May 2004 the applicant submitted a complaint about the bailiff to the National Bailiffs Committee (*Krajowa Rada Komornicza*). After one year of investigation, on 28 December 2006 the Radomsko district prosecutor charged the bailiff with fraud and abuse of authority.

32. On 3 September 2004 the bailiff made an unsuccessful attempt to recover possession.

33. On 15 December 2004 the bailiff discontinued the proceedings. The applicant appealed.

34. On 12 February 2005 the applicant requested that the enforcement proceedings be resumed. On 9 March 2005 the bailiff resumed the proceedings and ordered S.B.'s family to vacate the property.

35. On 2 September 2005 S.B.'s widow vacated the applicant's property. According to the applicant, the building was dilapidated and the garden neglected.

36. In the meantime, on 22 March 2004, the applicant brought an action for damages against the bailiff, the State Treasury and S.B.'s widow.

37. On 26 March 2008 the Piotrków Trybunalski Regional Court delivered its judgment. The court ordered S.B.'s widow to pay the applicant the amount of PLN 60,450.84 and dismissed the action against the bailiff and the State Treasury. The applicant appealed.

38. On 15 December 2008 the Łódź Court of Appeal upheld the part of the judgment in which the first instance court had ordered S.B.'s widow to pay the applicant the amount of PLN 60,450.84 and quashed the remainder. The case was remitted for reconsideration.

B. The applicant's complaint under the 2004 Act

39. On 22 September 2004 the applicant lodged a complaint with the Piotrków Trybunalski Regional Court alleging a breach of his right to a trial within a reasonable time. He relied on the provisions of the Law of 17 June 2004 on complaints about a breach of the right to a fair trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act"), which entered into force on 17 September 2004.

Under section 3 of the 2004 Act a complaint can be lodged in the course of enforcement proceedings.

40. However, on 8 November 2004 the court dismissed the applicant's complaint. The court examined only the course of the proceedings after 11 February 2004, when the proceedings were stayed by the bailiff. It held that the stay of the enforcement proceedings owing to S.B.'s death had been in compliance with the relevant procedural rules and considered that the proceedings had not been unreasonably lengthy. The applicant appealed.

41. On 24 November 2004 the appeal was rejected by the Regional Court as being inadmissible in law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

42. 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 described 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.

43. Under Article 767 of the Code of Civil Procedure a creditor may lodge a complaint against any action taken by a bailiff in enforcement proceedings. He may, in particular, seek a ruling as to whether the bailiff's actions were correct, that is, whether they were taken in accordance with a writ of execution, and lawful, that is, whether the means of enforcement applied in a given case were provided for by law. Complaints of this nature are examined by a district court under the provisions of Volume II of the Code of Civil Procedure relating to enforcement proceedings.

THE LAW

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

44. 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..."

45. The Government contested that argument.

46. The proceedings began on 31 December 1988. However, 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. Nevertheless, in assessing the reasonableness of the length of time that elapsed after that date, account must be taken of the state of the proceedings at that time.

The period in question ended on 2 September 2005, when S.B.'s widow vacated the applicant's property. The enforcement proceedings therefore lasted for 12 years and 4 months.

A. Admissibility

47. The Government submitted that the applicant had not exhausted the remedies available to him under Polish law. First, they referred to the possibility of lodging an appeal against the Radomsko District Court decision issued on 25 November 2002. They maintained that the applicant could have contested the bailiff's actions, as Polish law did not entail an obligation to secure alternative accommodation for the debtors in all eviction cases. In addition, they referred to the fact that it was the applicant's duty to find such accommodation.

48. Secondly, in that connection, the Government emphasised that the applicant could have lodged a constitutional complaint in order to contest the constitutionality of the provisions requiring him to find alternative accommodation for the debtor.

49. The Government also referred to the proceedings for damages against the bailiff, the State Treasury and S.B.'s widow and to the fact that the case was still pending before the Radomsko District Court.

50. The applicant contested the Government's arguments.

51. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 65).

52. In addition, Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The Court has recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether,

in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see the *Akdivar and Others* judgment, cited above, § 69, and the *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 53 and 54).

53. The Court observes that the applicant lodged a complaint about the length of the proceedings under the 2004 Act. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak v. Poland* (dec.) no. 24549/03, §§ 37-43).

54. Furthermore, the Court has already held that having exhausted the available remedy provided by the 2004 Act, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Cichla v. Poland* no. 18036/03, § 26, 10 October 2006).

55. As regards the applicant's action for damages under Article 417 of the Civil Code, the Court observes that the proceedings were instituted on 22 March 2004 and they have not yet been terminated. Thus, they have been pending already for over five years at two levels of jurisdiction. The Court notes that the proceedings aimed at providing redress for a breach of the reasonable-time principle have not been handled efficiently, especially in terms of the length of time taken for their determination. The Court therefore concludes, in the light of the above, that the applicant cannot be reproached for introducing his application with the Court even though the domestic proceedings are still pending.

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

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

B. Merits

58. The Government refrained from taking a position on the merits of the applicant's complaint.

59. 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).

60. 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 had exceeded a reasonable time, the Piotrków Trybunalski 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). In particular, the Regional Court did not examine the overall length of the enforcement proceedings.

61. 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 13 OF THE CONVENTION

62. The applicant also alleged a breach of Article 13 of the Convention, arguing that he had no effective domestic remedy in respect of the protraction of the proceedings in his case. Article 13 reads:

Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

63. The Government maintained that the applicant had an effective remedy. They referred to the proceedings for damages against the bailiff, the State Treasury and S.B.'s widow and to the fact that the case was still pending before the Radomsko District Court. The Government did not comment on the effectiveness of the 2004 Act.

64. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. However, the "effectiveness" of a "remedy" within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, §§ 154 et seq., ECHR 2000-XI).

65. While the subsidiarity principle underlying the Convention system requires the Contracting States to introduce a mechanism addressing complaints about the excessive length of proceedings within the national legal system, they are afforded – subject to compliance with the requirements of the Convention – some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision.

66. The fact that in the present case the applicant's complaint under the 2004 Act failed and that he did not obtain any redress from the domestic court does not in itself render the remedy under the 2004 Act incompatible

with Article 13. The Court recalls in this connection that it has found a claim under section 5 of the 2004 Act to be an effective remedy which applicants are required to exhaust for the purpose of Article 35 § 1 of the Convention (see *Michalak v. Poland*, cited above, §§ 37-44).

67. As stated above, the expression “effective remedy” used in Article 13 cannot be interpreted as a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see paragraph 40 above and also *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

68. In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant’s right to an effective remedy under Article 13 of the Convention was not respected. On that account it is not required to examine the Government’s submissions regarding Article 417 of the Civil Code. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

69. The applicant claimed 13,590.41 Polish zlotys (PLN) (approximately 2,960 euros (EUR)) in respect of pecuniary damage and PLN 150,000 (approximately EUR 32,700) in respect of non-pecuniary damage.

70. The Government contested these claims.

71. 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 applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

72. The applicant also claimed PLN 18,731.28 (approximately EUR 4,000) for the costs and expenses incurred before the domestic courts and the Court.

73. The Government contested the claim.

74. According to the Court’s case-law, an applicant is entitled to the reimbursement of 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 and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award

the applicant, who was unrepresented, the sum of EUR 500 for the proceedings before the Court.

C. Default interest

75. 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 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) for costs and expenses, to be converted into Polish zlotys 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President