



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

FOURTH SECTION

CASE OF CICHOCKI v. POLAND

(Application no. 40748/09)

JUDGMENT

STRASBOURG

30 November 2010

FINAL

28/02/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cichocki v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi,

Vincent Anthony de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 40748/09) 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 Ryszard Cichocki (“the applicant”), on 16 July 2009.

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

3. On 1 March 2010 the President of the Fourth Section decided to give notice of the application to the Government. The President further decided to give priority to the application under Rule 41 *in fine* of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1928 and lives in Brwinów.

A. Proceedings for the distribution of inheritance

5. On 15 June 1994 the applicant filed an application for the distribution of an inheritance left by his grandmother.

6. On numerous occasions the proceedings were suspended, mostly due to the successive deaths of the parties. The proceedings were:

- suspended on 30 November 1995;
- resumed on an unknown date in 1999;
- suspended on 25 January 2000;
- resumed on an unknown date in 2000 or 2001;
- suspended on 6 June 2001;
- resumed on 25 October 2004;
- suspended on 18 January 2005;
- resumed on 24 April 2006;
- suspended on 5 July 2006;
- resumed on 27 August 2007;
- suspended on 7 December 2007 but immediately resumed;
- suspended on 15 February 2008.

7. The proceedings are still pending before the court of first instance.

B. Proceedings under the 2004 Act

8. On 10 April 2009 the applicant lodged a complaint with the Warsaw Regional Court under 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”). He sought a finding that the length of the proceedings was excessive and compensation.

9. On 7 May 2009 the Warsaw Regional Court dismissed the applicant's complaint. In its assessment of the length of the proceedings, the Regional Court did not take into account the period before the entry into force of the 2004 Act. It then went on to analyse in detail the course of the proceedings, finding that the District Court had conducted them in a correct and timely manner. It further concluded that the long duration of the proceedings had resulted from numerous requests and motions filed by the parties as well as from the successive deaths of the parties. This obliged the District Court to suspend the proceedings each time. The Regional Court finally pointed out that it was incumbent on the parties and not on the court to determine the identity of the heirs of the deceased parties in order for the proceedings to be continued.

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 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

11. On 9 June 2010 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept 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 the applicant had been involved. In respect of non-pecuniary damage the Government proposed to award PLN 5,000 to the applicant (the equivalent of approx. EUR 1,250). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

12. 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.

13. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application or part thereof under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

14. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out

an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length of proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded where it has found a breach of the reasonable time requirement (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-V; *Scordino v. Italy* (no.1) [GC], no. 36813/97, §§ 193-215, ECHR-2006-V; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

15. On the facts and for the reasons set out above, in particular the amount of compensation proposed, which is substantially less than the Court would have awarded in similar cases, the Court finds that the Government failed to submit a statement offering a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see, by contrast, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

16. 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 the examination of the admissibility and merits of the case.

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

17. 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...”

18. Along with their unilateral declaration, the Government expressed the opinion that some delay in the proceedings had been attributable either to the applicant or to other parties to the proceedings, or had resulted from circumstances independent from the conduct of the domestic court, such as the successive deaths of the parties.

19. The period to be taken into consideration began on 15 June 1994 with the filing of the application for the distribution of an inheritance. The proceedings instituted thereby are still pending. Consequently, they lasted more than sixteen years at one level of jurisdiction.

A. Admissibility

20. 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

21. 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; *Kaniewska v. Poland*, no. 8518/08, § 32, 18 May 2010; *Jerzak v. Poland*, no. 29360/06, § 26, 7 October 2008).

22. 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 Warsaw 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).

23. 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, even though it was partly due to events not attributable to the domestic courts, such as the successive deaths of the parties (see paragraph 9 above), 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

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 applicant claimed a lump sum of 45,000 euros (EUR) in respect of pecuniary and non-pecuniary damage as well as for the costs and expenses incurred in the course of the proceedings before the domestic courts and before the Court.

26. The Government contested the claim, arguing that it was exorbitant and unjustified in the light of the Court's jurisprudence in similar cases.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this part of the claim.

28. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. The Court has had regard to the matters raised by the Government (see paragraph 18 above). Consequently, ruling on an equitable basis, the Court awards the applicant EUR 11,000 under that head.

B. Costs and expenses

29. As regards the costs and expenses incurred before the domestic courts and before the Court, the applicant presented supporting documents to the total amount of PLN 2,740 (equivalent of EUR 700).

30. As it has already been indicated above, the Government contested the claim in its entirety.

31. Regard being had to the documents in its possession and to its case-law, the Court considers that the sum claimed should be awarded in full.

C. Default interest

32. 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. *Dismisses* the Government's request to strike the application out of its list of cases;
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 11,000 (eleven thousand euros) in respect of non-pecuniary damage and EUR 700 (seven hundred euros) for costs and expenses, 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 amounts 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 30 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President