



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

FOURTH SECTION

CASE OF SAWICKA v. POLAND

(Application no. 37645/97)

JUDGMENT

STRASBOURG

1 October 2002

FINAL

01/01/2003

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 Sawicka v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs E. PALM,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 September 2002,

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

PROCEDURE

1. The case originated in an application (no. 37645/97) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mrs Helena Sawicka ("the applicant"), on 10 March 1997.

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

3. The applicant alleged, in particular, that the civil proceedings in her case exceeded a reasonable time, contrary to Article 6 § 1 of the Convention. .

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 11 October 2001 the Court declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Polish national, born in 1930 and living in Warsaw.

9. On 2 November 1987 the applicant lodged a motion with the Warsaw District Court, claiming division of conjugal property, consisting, as she claimed, of 42 pieces of movable property. Subsequently, hearings were held on, *inter alia*, 18 May 1988, 11 January 1989 and 17 February 1989.

10. In 1990 an expert submitted a report concerning the value of movable property. Apparently, on an unspecified later date, the President of the District Court, following the applicant's complaints about the lack of progress in the case, ordered that the conduct of the proceedings be supervised by him. On an unspecified date in 1991 the case was transferred to another judge rapporteur. On 1 April 1992 the applicant again complained about the excessive length of the proceedings.

11. On an unspecified date the defendant claimed that a house in which the applicant lived should be included in the property concerned. On an unspecified date four years after the beginning of the proceedings he submitted certain documents to prove that his family had borne certain costs relating to the construction of the house. On 15 January 1992 a hearing was held and the court ordered that an expert report be prepared to estimate the value of the house. On 9 February 1993 the defendant proposed that a court settlement be concluded. The applicant did not accept the proposed terms. On the whole, 22 hearings were held until 1 May 1993, the date on which Poland's recognition of the right of individual petition became effective.

12. In 1993 further hearings were held on 17 August, 16 September, 2 November and 2 December. Later on, the court again appointed an expert with the task of producing an estimate of the value of movable property. The defendant twice failed to make his property accessible to the expert.

13. In reply to the applicant's fresh complaint about the excessive length of the proceedings, on 2 July 1994 the President of the Warsaw Regional Court informed her that the case was complex as the property concerned consisted of a substantial number of objects. Moreover, the parties submitted conflicting claims as to whether a certain plot of land constituted a part of this property, and concerning expenditure borne by them. What was more, the parties had repeatedly submitted new requests for evidence to be taken, which the court had allowed. As a result, further hearings had been held on 2 November and 2 December 1993, 11 July and 27 September 1994. Two further expert opinions had been prepared in order to complete the previously submitted opinions, as the lapse of time had rendered the old ones obsolete.

14. On 2 November 1994 the applicant submitted her further pleadings. On 4 November 1994 a hearing was held. As witness R.S. failed to attend,

the court imposed a fine on her and adjourned the hearing for 18 November 1994. On that day, the court lifted the fine as R.S. had informed the court that she was of advanced age and could therefore not come to the court.

15. On 8 February 1995 the court ordered that enforcement proceedings be instituted against the applicant as she had failed to pay her part of the expert's fees, despite two summonses to do so.

16. On 14 March 1995 the court ordered that a new expert, M.S., draw up a further opinion as to the value of movables in order to complement the opinions that had been prepared previously. On 22 March 1995 the defendant submitted his new pleadings.

17. On 23 March 1995 the applicant again complained about the length of the proceedings. On 19 April 1995 the Deputy President of the Regional Court informed her in reply that the proceedings had indeed lasted for a long time, but there was nothing to suggest that they were not conducted diligently. The new judge rapporteur, who had been appointed in the meantime, had been taking appropriate measures in order to proceed further.

18. On 17 May 1995 the applicant complained again about the excessive length of the proceedings. Further hearings were held on 22 June and 19 September 1995. On 21 September 1995 the defendant requested that the expert opinion of the expert in construction issues be complemented by indicating the value of certain building materials used for the construction of the house constituting a part of the conjugal property.

19. On 11 April 1996 the applicant complained once more about the length of the proceedings. In his reply of 23 April 1996, the President of the Regional Court informed her that he had no influence whatsoever in so far as changes of judge rapporteurs caused by their leaving the judiciary were concerned. Judge G., who had been the previous rapporteur, had left the judiciary and indeed, for a certain period his cases had not been assigned to another judge. However, a new rapporteur had been appointed and the next hearing was to be held on 11 June 1996.

20. In a letter to the President of the Regional Court of 9 May 1996, the Polish Helsinki Committee drew his attention to the fact that the case had remained pending since 1987, which seemed to be in breach of Article 6 § 1 of the Convention, and that the judge rapporteur had been changed four times. As a result, each time the hearings in the case had to be recommenced.

21. On 28 June 1996 the applicant further requested the court to speed up the proceedings, submitting that she was in a very difficult financial position and that the outcome of the case, if the court found in her favour, could positively affect her situation.

22. Apparently on 4 October 1996 the applicant again complained about the length of the proceedings. In his reply of 8 November 1996, the President of the Regional Court stated that her complaints were well founded, that the attention of the judge rapporteur had been drawn thereto,

and that the case-file would be sent to experts with no delay in order for further questions to be answered.

23. On 20 November 1996 the applicant drew the court's attention to the fact that five months had elapsed since the last hearing.

24. On 27 January 1997 the Regional Court rejected the applicant's appeal against a decision of 13 December 1996, concerning the expert's fee. On 5 February 1997 the court in part amended its decision of 6 November 1996 concerning a further expert opinion and changed questions to be put to the expert in construction issues.

25. On an unspecified later date the Ombudsman requested the Regional Court to explain grounds of a certain further period of inactivity in the case. In a reply of 11 July 1997, the Ombudsman's office was informed that the judge rapporteur had been on sick leave since April 1997. The applicant's case, in view of its considerable length to date, would exceptionally be assigned to another judge. The case-file would immediately be sent to one of the three experts called to submit their complementary opinions.

26. On 4 October 1997 the defendant submitted his pleadings, calling into question the contents and conclusion of the expert opinion prepared by M.S., which had meanwhile been submitted to the court. On 29 October 1997 he submitted further pleadings. On 12 November 1997 a hearing was held. The Regional Court served on the defendant the applicant's pleadings of 7, 9, 13, 28 and 29 October 1997. The court adjourned the hearing *sine die*, and ordered the parties to submit a list of movables constituting the property. Expert M.S. refused to prepare a further report, indicating that the parties had not co-operated with him properly.

27. In a letter of 30 June 1998, in reply to the applicant's complaint about the length of the proceedings of 24 April 1998, the Ministry of Justice informed her that the length of the proceedings had in part been caused by the attitude of the parties, who repeatedly referred in their pleadings to facts and decisions given in other sets of proceedings, submitted numerous and voluminous pleadings, often having no relation whatsoever to the subject of the proceedings. The case-file counted seven volumes, consisting in a large part of these pleadings.

28. At a hearing held on 15 June 1998 the court attempted to make the parties conclude a court settlement. They were further ordered to state their positions in a precise manner and the time-limit for doing so was set for 18 August 1998.

29. In reply of 19 October 1998 to the applicant's new complaint, the President of the Court of Appeal stated that the fact that the case had not been in part dealt with sufficient speed, was a ground on which it had been taken into the administrative supervision by the President of the District Court. The changes of presiding judges had been caused by reasons which could not be attributed to the court.

30. A further hearing was held on 16 October 1998 and a number of witnesses were interviewed. On 17 and 28 October 1998 the defendant submitted his further pleadings.

31. On 8 January 1999 another hearing was held. The court heard five witnesses. Further pleadings of the defendant were submitted on 15 January 1999. The next hearing was held on 13 April 1999.

32. The hearing scheduled for 23 December 1999 was adjourned as the judge was ill. Subsequent hearings were held on 21 April, 5 July and 25 September 2000.

33. By a letter of 24 August 2000 the President of the Civil Division of the Warsaw-Centre District Court informed the applicant that her complaints about the lack of progress in the proceedings were ill-founded. The length of proceedings had mostly been caused by measures taken by the parties themselves, the applicant included, in particular by their repeated requests that new evidence be taken and by their submitting voluminous pleadings.

34. On 26 October 2000 the applicant submitted her pleadings to the court, numbering 21 pages. These were subsequently served on the defendant and he was ordered to take a stand thereon within 21 days.

35. On 1 December 2000 the court ordered an expert opinion as to the value of the property in question. On 18 April 2001 this opinion was submitted to the court.

36. The proceedings are pending.

THE LAW

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

37. The applicant complains that the excessive length of proceedings gave rise to a violation of Article 6 § 1 of the Convention, which in its relevant part reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Arguments of the parties

38. The Government argued, firstly, that the proceedings were complex, in particular as the parties had divorced as long ago as in 1980, whereas the present case had been instituted seven years later. They averred that the division of the marital property was a controversial issue. The parties had disagreed whether a certain plot of land should be comprised in the property

and as to the amount of expenditure that the parties had incurred in connection with that land. Moreover, expert opinions had to be ordered repeatedly as the parties contested the opinions previously submitted.

39. The applicant denied that the case was complex and argued that what had initially been a routine civil case had become more complicated after the defendant, four years after the beginning of the proceedings, submitted certain documents supposedly to prove the financial involvement of his family in the construction of the house. She also argued that the proceedings had now become of a certain complexity mostly because of the lapse of time since their beginning in 1987. She emphasised that there was nothing in the nature of the case to show that it should be regarded as complex.

40. As regards the conduct of the authorities and of the parties, the Government argued that the courts had shown due diligence in the conduct of the case. Hearings had been held regularly and there had been no periods of inactivity. Some delays had been caused by five changes of the presiding judges or by the illness of one of them, which had to be regarded as factors of an objective character. A certain prolongation of the proceedings had been caused by the parties' conduct, and this, again, could not be attributed to the court. The court had tried to encourage the parties to conclude a court settlement, but to no avail as they would not seriously consider such a possibility. The parties had submitted numerous and voluminous pleadings, often not relevant to the case at all, which had contributed to the length of the case, and the court had had on each occasion to communicate them to the other party in order to give it an opportunity to take a position thereon. Some of the steps taken by the applicant had been devoid of any reasonable purpose and therefore the applicant was at least in part responsible for the length of the proceedings.

41. The applicant submitted that she had complained seven times about the length of proceedings, but to no avail. The court had been inept in dealing with the case, had taken too much evidence and had ordered expert opinions, which were useless. She also referred to the defendant's delaying tactics – he was legally represented – submitting numerous pleadings and calling into question the soundness of the expert reports. She stressed that the court had dealt with this inadequately. The presiding judges had changed many times and the newly appointed ones had not known the case, so they had to take some time to get acquainted with the case-file. Judge G., who left the judiciary before 1995, had prepared the case so that it was ready for a decision on the merits, as relevant factual circumstances had already been established. However, the new judge had ordered new expert opinions, disregarding the fact that the relevant factual circumstances had been well documented by the case-file.

B. Period to be taken into consideration

42. The Court first recalls that Poland recognised the competence of the European Commission of Human Rights to examine individual applications “from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993”. Pursuant to Article 6 of Protocol No. 11 to the Convention this limitation shall remain valid for the jurisdiction of the Court under that Protocol. Hence, the Court notes that the period to be taken into consideration began not in November 1987, when the applicant lodged her action with the Warsaw District Court, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition took effect.

43. The Court, however, recalls that in order to determine the reasonableness of the length of proceedings in question, regard must be had to the state of the case on 1 May 1993. On the above understanding the proceedings have lasted so far fourteen years and eight months, of which eight years and five months fall within the scope of the Court’s competence *ratione temporis* (see, among other authorities, the Proszak v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 31, and the Styranowski v. Poland judgment of 30 October 1998, *Reports* 1998-VIII, §§ 45-46).

C. The Court’s assessment

44. The Court observes that the case concerned a claim for division of marital property, in which initially 42 items of movable possessions such as furniture and various household appliances were included. It is true that later on further property, including a house built during the marriage, was claimed to constitute a part of that property. However, having regard to the nature of the legal issues to be determined by the civil court in this type of proceeding, there is no indication, in the Court’s opinion, that the present case was complex.

45. The Court further observes that indeed there were six successive presiding judges in the case. In these circumstances the applicant’s argument that each new judge had to acquaint himself with the circumstances of the case, which must have contributed to the prolongation of the proceeding, should be regarded as plausible. It is true that certain changes in the composition of the court cannot be held against the Government. For example, one of the judges left the judiciary and another fell ill. However, the Court notes that it was in part the protracted character of the proceedings which entailed those changes. It is frequent that in lengthy judicial proceedings the composition of the court may change as

time passes and organisational changes take place. Had the proceedings not lasted for so long, it would not have been necessary to change the presiding judges as many times.

46. The Court further observes that four expert opinions were ordered throughout the proceedings. It should be emphasised here that, as pointed out in the President of the Regional Court's letter of 2 July 1994 (see § 13 above) new expert reports had to be prepared since the lapse of time had rendered the old reports obsolete. Moreover, there was serious inflation in Poland at the beginning of the 1990s, which made it necessary to re-evaluate the items of property, which had previously been valued.

47. The Court further notes that there was a period of inactivity from 13 April to 23 December 1999, as no hearings were held throughout this period and there was no other progress in the proceedings.

48. As regards the conduct of the applicant, the Court accepts that the applicant and the defendant did indeed take certain steps, which contributed to the length of the proceedings, as new requests for evidence to be taken were repeatedly submitted by the parties. However, the Government have not shown that it was only the applicant who asked the court to take evidence. Moreover, it was for the court to decide which evidence was relevant to the case. It was not obliged to accede to all parties' requests in this respect. Moreover, parties' requests for evidence to be taken do not absolve the courts from the obligation to proceed speedily. What is more, the impact of these objections on the conduct of the proceedings was not such as to justify their overall length.

49. The Court also notes that it was further acknowledged that the proceedings had lasted too long in a letter of the President of the Regional Court of 8 November 1996 (see § 22 above), in reply to the applicant's complaint, in a letter of the President of the Regional Court to the Ombudsman's office of 11 July 1997 (see § 25 above), and in a letter of the President of the Court of Appeal of 19 April 1998 (see § 29 above).

50. Assessing the circumstances of the case as a whole, the Court cannot but consider that the overall length of the proceedings here at issue was excessive.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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, costs and expenses

52. The applicant claimed damages for pecuniary and non-pecuniary damage, as well as reimbursement of the costs she had incurred in the domestic proceedings and before the Strasbourg institutions in the amount of PLN 50,000.

53. The Government submitted that the applicant's claims were grossly excessive and that the damage sustained by the applicant, if any, should be assessed in the light of the relevant case-law of the Court in its cases against Poland, and with regard to the national economic circumstances.

54. The Courts observes that the applicant's claims as to the costs and expenses she allegedly incurred in the proceedings, have not been quantified, and that the applicant did not submit any specifications of fees or other expenses. The Court observes that for an award to be made it has to be satisfied that the costs and expenses were actually incurred, were necessarily incurred and were also reasonable as to quantum (see, among other authorities, the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, § 36). Accordingly, the Court dismisses this claim.

55. The Court finds that the applicant has not shown that she sustained any pecuniary damage, and that, in any event, no causal link has been established between the length of the proceedings and alleged damage. Therefore, the Court does not award the applicant any compensation for pecuniary damage. The Court accepts, however, that the applicant suffered damage of a non-pecuniary nature as a result of the length of the proceedings in which she was involved. Making an assessment on an equitable basis, the Court awards the applicant a global sum of EUR 6,000 in respect of non-pecuniary damage.

B. Default interest

56. 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. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention], EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President