



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

FOURTH SECTION

CASE OF R.O. v. POLAND

(Application no. 77597/01)

JUDGMENT

STRASBOURG

25 March 2003

FINAL

25/06/2003

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 R.O. v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 4 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 77597/01) 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, Mrs R.O. (“the applicant”), on 28 June 2000.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki.

3. On 26 March 2002 the Fourth Section decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. The President of the Chamber further decided to authorise the anonymity of the applicant (Rule 47 § 3 of the Rules of Court).

THE FACTS

4. The applicant was born in 1961 and lives in Białystok, Poland.

5. In April 1992 the applicant married Mr M.O., a divorcee who had two daughters from his first marriage. In May 1992 the applicant gave birth to a son. On 14 January 1993 the applicant’s husband committed suicide.

6. On 26 January 1993 the applicant initiated court proceedings before the Białystok District Court (*Sąd Rejonowy*) in order to obtain a decision as to who should be regarded as heirs to her late husband’s estate. She submitted that the estate should be divided between her and her son,

according to the holograph will written by the applicant's husband on 16 October 1992.

7. On 5 February 1993 the first hearing was held. The daughters of M.O. joined the proceedings. Their counsel requested that the inheritance be declared according to statute and therefore be in part accorded to them.

8. During the second hearing, held on 14 April 1993, the deceased's daughters contested the validity of his will.

9. The Government submit that between April and August 1993 the applicant asked the court to take evidence from eleven witnesses.

10. In 1993 the District Court held five hearings and heard eight witnesses. In September and November 1993 two hearings were adjourned because the applicant had to attend a commission for disability and her counsel was ill.

11. On 18 January, 1 February and 22 February 1994 hearings were held at which both daughters of M.O. requested to hear witnesses living in New York. Subsequently, the applicant applied to the court to hear her father who also lived in New York.

12. At the hearing held on 8 March 1994 the court allowed the applications to hear witnesses with the help of the Polish Consulate in New York. On 26 September 1994 the court received a deposition taken from the applicant's father. The witnesses requested by M.O.'s daughters were not heard because they did not arrive at the Consulate.

13. At the next hearing held on 26 January 1995, upon the application of M.O.'s daughters, the court requested an expert opinion to establish whether the will had been hand-written by M.O.

14. During the hearing held on 14 September 1995 the court examined the expert opinion which confirmed that the will had been hand-written by M.O. The counsel representing M.O.'s daughters requested another expert opinion to establish the testator's mental condition at the time of writing the will on the basis of his hand-writing. The applicant contested the necessity for such opinion. Nevertheless, the court granted the application and adjourned the hearing. In November 1995 the Krakow Forensic Medicine Institute informed the court that it was unable to prepare the requested opinion.

15. At the hearing held on 15 December 1995 the court again decided to request a psychiatric opinion based on M.O.'s hand-writing by another expert. The opinion was submitted to the court in October 1996.

16. Between 16 December 1995 and 5 December 1996 no hearings were held. Subsequently, the case was taken over by another judge.

17. On 6 December 1996 a hearing was held. The court decided that an inventory of the estate would be prepared and ordered four expert opinions.

18. In January 1997 the applicant requested the court to exempt her from the costs of the expert opinions. On 11 March 1997 the court dismissed her application.

19. On 8 May 1997 the applicant applied to stay the proceedings because another set of civil proceedings between the same parties was pending. On 9 June 1997 she requested the court to resume the proceedings.

20. In December 1997 and January 1998 both daughters of M.O. were exempted from the costs of the expert opinions. Subsequently, their counsel requested another psychiatric opinion concerning the testator's mental condition at the time of writing the will.

21. Between 7 December 1996 and 31 May 1998 no hearings were held.

22. At the hearing held on 1 June 1998 the court heard four experts and allowed an application for another expert opinion concerning the mental condition of the testator filed by the daughters of M.O.

23. At the hearing held on 9 July 1998 the court ordered the applicant to apply for the appointment of a guardian for her child. It also set a time-limit for the daughters of M.O. to evaluate one of the objects belonging to the estate and allowed their application to hear an expert.

24. Subsequently, the applicant requested the Court not to schedule any hearings for August 1998 and M.O.'s daughters lodged similar application concerning a period between 2 and 22 October 1998.

25. Subsequently, hearings were held on 24 November 1998 and 14 January 1999. At each of those hearings the counsel representing M.O.'s daughters made applications for the obtaining of new evidence.

26. At the hearing held on 18 March 1999 their counsel again requested that evidence be taken from witnesses who lived in New York and asked for another expert opinion concerning the deceased's mental health. The court allowed all requests. The applicant's representative contested the necessity of adducing new evidence and argued that it would lead to further delays.

27. In April 1999 the Polish Consulate in New York informed the court that the information requested could be obtained only by means of international judicial assistance. In May 1999 M.O.'s daughters were finally exempted from the costs of new expert opinions and subsequently they applied to the court to have recourse to international judicial assistance. The court granted this request. However, in April 2000 the United States Justice Department refused to proceed with the application for the judicial assistance because the information provided by the District Court was imprecise.

28. In August 2000 another expert opinion concerning the applicant late husband's mental health was submitted to the court.

29. Between April 1999 and September 2000 no hearings were held.

30. On 10 October 2000 the court held a hearing.

31. During the hearing held on 17 October 2000 the Białystok District Court gave its decision. It declared that the heirs of the applicant's husband were, according to statute, the applicant, her son and M.O.'s two daughters. In addition, the court established that the will was valid but it did not cover the whole of the estate.

32. The applicant appealed against this decision to the Białystok Regional Court (*Sąd Okręgowy*).

33. The Białystok Regional Court held one hearing. On 20 February 2001 it dismissed the appeal.

THE LAW

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

34. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided 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 fair ... hearing ... by [a] ... tribunal...”

35. The Government contended that the facts of the case disclosed no breach of that provision.

A. Admissibility

36. The Court notes that the application 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

1. Arguments before the Court.

(a) The Government

37. The Government submitted that the case was rather a complex one. They claimed that “in order to examine the case properly and fairly” the domestic court ordered different types of expert opinions. In addition, the court took evidence from witnesses living abroad and had recourse to international judicial assistance.

38. As regards the conduct of the applicant, the Government submitted that she had partly contributed to the length of the proceedings because she requested the court to obtain new evidence, applied for the exemption from the court fees, asked to hear her father who lived in the United States, requested adjournment of two hearings and asked for the staying of the

proceedings for a certain period of time. The Government considered that M.O.'s daughters were also responsible for the protracted length of the proceedings.

39. With respect to the conduct of the domestic authorities, the Government submitted that they showed due diligence by allowing applications to hear witnesses living in the United States and to have recourse to international judicial assistance filed by the daughters of M.O. Moreover, in December 1997 and January and June 1998 the court fixed time-limits for lodging applications and submitting documents.

40. Lastly, the Government maintained that what was at stake for the applicant was solely of a pecuniary nature.

41. In conclusion, the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

(b) The applicant

42. The applicant disagreed with the Government's submission that the case was complicated. She claimed that the case was not complex and it was unnecessary to prepare so many expert opinions.

43. She further submitted that her conduct did not contribute to the protracted length of the proceedings. In particular, she maintained that during a few months when the proceedings were stayed at her request the case was examined by the court experts and that the adjournment of two hearings was caused by circumstances for which she could not be held responsible. The applicant further claimed that it was her duty to actively participate in the proceedings in order to defend her late husband's good name. Nevertheless, she withdrew some applications to hear witnesses in order not to prolong the case. She claimed that on several occasions she had asked the court to speed up the proceedings. Moreover, since 1995 she had unsuccessfully requested the court to set a time-limit for adducing new evidence and had challenged the necessity to obtain new evidence requested by M.O.'s daughters.

44. As regards the conduct of the domestic authorities, the applicant submitted that the court only once gave M.O.'s daughters a time-limit to produce a certain document. She further claimed that the court allowed all the vexatious applications of M.O.'s daughters despite the fact that they were obviously intended to prolong the proceedings.

45. Lastly, the applicant submitted that the prolonged proceedings had caused enormous financial and emotional hardship for her and her child. For over eight years of the proceedings she had to bear the high costs of representation and expert opinions and was prevented from benefiting from the property her husband left to her in his will. Consequently, her difficult financial situation could not guarantee her and her child a dignified life and made her dependent on her family's help. Furthermore, she was not allowed to forget the traumatising circumstances of her husband's death and to

continue a normal life. The applicant, who in December 2000 was diagnosed with breast cancer, submitted that the prolonged stress and feeling of insecurity caused by the impugned proceedings contributed to her illness.

2. *The Court's assessment.*

(a) Period to be taken into consideration

46. The Court notes that the period to be taken into consideration began not on 26 January 1993 when the applicant initiated the proceedings, but on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. It ended on 20 February 2001 when the appellate court delivered a final judgment (see paragraphs 6 and 33 above).

It follows that the proceedings lasted eight years and twenty-five days, out of which seven years and over nine months are to be taken into consideration by the Court.

47. In assessing the reasonableness of time in question the Court will have regard to the state of the case on 1 May 1993 (see, among other authorities, *Malinowska v. Poland*, no. 35843/97, § 84, 14 December 2000, unreported).

(b) Reasonableness of the length of the proceedings

48. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of 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).

49. The Court observes that the case involved a certain degree of complexity as it required the taking of expert evidence. In addition, evidence was taken from witnesses living overseas. However, the complexity does not justify the overall delay in deciding the case.

50. As regards the applicant's conduct, the Court is not persuaded by the Government's arguments that she contributed to the overall length of the proceedings (see paragraph 38 above). The Court notes that the applicant actively participated in the proceedings, in particular by requesting new evidence. However, her conduct cannot be blamed for the overall length of the proceedings.

51. The Court is of the opinion that the conduct of the Białystok District Court, which examined the case for seven years and five months after 1 May 1993, contributed to the delay in the proceedings (see paragraphs 6-31 above). In particular, the Court notes that no hearings were

held between 16 December 1995 and 5 December 1996 when the case-file was sent to an expert (see paragraph 16 above). Moreover, no hearings were held between 7 December 1996 and 31 May 1998 or between April 1999 and September 2000 (see paragraphs 21 and 29 above). Although the Court acknowledges that during that time the first-instance court took some steps in the proceedings, such as ordering expert opinions and requesting international judicial assistance, these do not justify such long delays between the hearings.

52. Furthermore, the Court is of the view that what was at stake for the applicant in the domestic litigation was of significant importance to her. The Court notes that the applicant, due to her personal and financial situation, was in a particularly vulnerable position. Therefore, the prolonged inheritance proceedings affected the well-being of herself and her family.

(c) Conclusion

53. The Court considers that, in the particular circumstances of the instant case, a period of eight years and twenty-five days, out of which seven years and over nine months are to be taken into consideration by the Court, exceeds a reasonable time.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 1,019,212 Polish zlotys (PLN) in respect of pecuniary damage. She also claimed PLN 1,500,000 for non-pecuniary damage.

56. The Government submitted that the applicant’s claims were excessive.

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

58. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, the Court considers that, in the circumstances of this particular case and

deciding on equitable basis, the applicant should be awarded EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

59. The applicant also claimed PLN 13,101 for the costs and expenses incurred before the domestic courts.

60. The Government submitted that the applicant's claim was excessive.

61. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred before the national courts for the prevention or redress of a violation or in order to have the same established by the Court. In the present case, regard being had to the information in its possession and to the above criteria, the Court dismisses this claim (see, among other authorities, *Hertel v Switzerland* judgment of 25 August 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2334, § 63).

C. Default interest

62. 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 (see *Christine Goodwin v. the United Kingdom* [GC], application no. 28957/95, §124, to be published in ECHR 2002).

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 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 Polish zlotys at the rate applicable at the 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 March 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President