



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

FOURTH SECTION

CASE OF SZYMIKOWSKA AND SZYMIKOWSKI v. POLAND

(Application no. 43786/98)

JUDGMENT
(Friendly settlement)

STRASBOURG

6 May 2003

This judgment is final but it may be subject to editorial revision.

In the case of Szymikowska and Szymikowski 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 Mr M. O'BOYLE, *Section Registrar*,
 Having deliberated in private on 6 May 2003,
 Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in application no. 43786/98 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 two Polish nationals, Mrs Jadwiga Szymikowska and Mr Zygmunt Szymikowski ("the applicants"), on 9 June 1998.

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

3. The applicants complained, *inter alia*, under Article 6 § 1 of the Convention about the length of a set of civil proceedings.

4. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 7 June 2001 the Court communicated the complaint concerning the length of the proceedings to the Government and rejected the remainder of the application.

5. On 10 September 2002, having obtained the parties' observations, the Court declared the application admissible in so far as it had been communicated to the Government.

6. On 3 December 2002, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 16 December 2002 and on 2 January 2003 the Government and the applicants respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. The applicants were born in 1945 and 1941 respectively and live in Gdańsk.

8. The applicants share a plot of land and a house with another family (hereinafter: the neighbours).

9. On 17 June 1987 they filed with the Gdańsk District Court (*Sąd Rejonowy*) a petition in which they requested that the co-ownership of the plot of land and the house be dissolved.

10. On 19 April 1989 the court forbade the neighbours to carry out any modifications in the cellar until the completion of the proceedings. On 27 September 1989 a similar order concerning the whole house was issued in respect of the applicants.

11. On 3 June 1992 the Gdańsk District Court gave judgment. The neighbours appealed and on 11 March 1993 the Gdańsk Regional Court quashed the judgment and remitted the case for re-examination.

12. Subsequently, the District Court held a number of hearings and ordered several expert opinions.

13. On 28 October 1996 it forbade the neighbours to carry out any works in the house. On 23 May 1997 the Regional Court dismissed their appeal against that decision.

14. In its letter of 30 January 1997 the Ministry of Justice confirmed that the proceedings were lengthy and found that the applicants' neighbours had contributed to the delay by their petitions contesting the expert opinions. It further noted that since 1994 the President of the Gdańsk Regional Court had supervised the course of the proceedings and made monthly reports on their progress. However, the Ministry found these measures ineffective and decided to take the proceedings under its administrative supervision.

15. The proceedings are still pending.

THE LAW

16. On 16 December 2002 the Court received the following declaration from the Government:

"I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Poland offer to pay 15,000 Polish zlotys to Mrs Jadwiga Szymikowska and Mr Zygmunt Szymikowski. This sum is to cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government acknowledge that the domestic proceedings, to which the above-mentioned case relates, are now subject to supervision. In particular, the President of

the Gdańsk District Court has been requested to inform the Minister of Justice at regular intervals about the progress of those proceedings.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

17. On 2 January 2003 the Court received the following declaration signed by the applicants:

“We note that the Government of Poland are prepared to pay us the sum of 15,000 Polish zlotys covering pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights. We further note that the domestic proceedings, to which the above-mentioned case relates, have been taken under supervision and the President of the Gdańsk District Court has been requested to regularly inform the Minister of Justice about their progress.

We accept the proposal and waive any further claims against Poland in respect of the facts of this application. We declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and we have reached.

We further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court’s judgment.”

18. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

19. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties’ undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 6 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O’BOYLE
Registrar

Nicolas BRATZA
President