



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

FOURTH SECTION

CASE OF MAJKRZYK v. POLAND

(Application no. 52168/99)

JUDGMENT

STRASBOURG

6 May 2003

FINAL

06/08/2003

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 Majkrzyk 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 8 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 52168/99) 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, Halina Majkrzyk ("the applicant"), on 4 January 1999.

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

3. The applicant alleged that her right to a "hearing within a reasonable time" had not been respected.

4. The application was allocated to the Fourth 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.

5. 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 (Rule 52 § 1).

6. By a decision of 27 August 2002 the Court declared the application admissible.

THE FACTS

7. The applicant was born in 1950 and lives in Kaczyn, Poland.

8. On 10 June 1988 the applicant filed with the Kielce District Court (*Sąd Rejonowy*) an application for distribution of the inheritance left by her late mother. From 19 July 1988 to 30 April 1993 the court held eleven hearings and ordered that seven expert reports be prepared.

9. On 31 August and 14 October 1993 the court held hearings. Subsequently, on 25 October 1993 the court heard a witness at the place of his residence.

10. A hearing listed for 18 November 1993 was adjourned *sine die* since a witness did not appear. On the same day the court ordered that a supplementary expert report be prepared.

11. On 6 May 1994 the court adjourned the hearing at the request of a lawyer of B.J. ("B.J."), a party to the proceedings.

12. A hearing listed for 8 June 1994 was adjourned as a witness failed to appear.

13. On 6 July 1994 the court held a hearing and set a time-limit for the parties to submit their requests as to evidence in the case.

14. During the hearing held on 29 July 1994 the court ordered that a supplementary expert report be prepared. On 24 October 1994 it was submitted to the court.

15. On 15 December 1994 B.J. requested the court to secure the claim.

16. On 13 February 1995 the court held a hearing. It set 14 days time-limit for B.J. to submit his requests as to evidence in the case and for the applicant as to submit her pleadings.

17. A hearing listed for 27 March 1995 was adjourned until 8 May 1995 at the request of B.J.'s lawyer. Subsequently, the court adjourned the hearing scheduled for 8 May 1995 until 22 May 1995.

18. At the hearing held on 22 May 1995 B.J. challenged the expert opinion and requested the court to inspect the site.

19. On 29 May 1995 the court refused to secure the claim.

20. On 10 November 1995 the court held a hearing. A hearing scheduled for 26 January 1996 was adjourned as the expert failed to appear.

21. On 27 March 1996 the court held a hearing. It heard the expert and ordered inspection of the site. The inspection of the site scheduled for 28 June 1996 was postponed because of the bad weather. On 23 August 1996 the court inspected the site.

22. On 7 January 1997 the court ordered that supplementary expert reports be prepared.

23. On 17 March 1997 the applicant and four other parties to the proceedings sent a letter to the President of the Cracow Court of Appeal (*Sąd Apelacyjny*) requesting that the proceedings be expedited. In a letter of 13 May 1997 the President informed the applicant that the President of the

Kielce District Court would supervise the conduct of the proceedings. He also admitted that the proceedings had been slowed down as a result of changes to the rapporteurs.

24. On 8 May 1997 a supplementary report was submitted to the court.

25. On 14 July 1997 the court held a hearing. It set a two-week time-limit for the lawyer of B.J. to submit pleadings.

26. A hearing listed for 5 September 1997 was adjourned *sine die*.

27. On 6 October 1997 the court ordered that a supplementary report be prepared. On 20 October 1997 it was submitted to the court.

28. The next hearing, listed for 22 November 1997, was adjourned at the request of B.J., as he was ill.

29. On 22 December 1997 the court held a hearing.

30. A hearing scheduled for 4 February 1998 was adjourned at the request of B.J.'s lawyer.

31. On 18 February 1998 the court held a hearing. It ordered that a supplementary expert report be prepared. On 17 March 1998 a supplementary report was submitted to the court.

32. A further hearing, listed for 23 March 1998, was adjourned *sine die*.

33. On 1 June 1998 the court ordered that a fresh supplementary expert report be prepared within one month. On 10 July 1998 the court obtained a supplementary expert report. On 5 August 1998 the applicant and other parties to the proceedings challenged the expert report.

34. On 30 September 1998 the applicant complained to the President of the Kielce District Court about the delay in the proceedings.

35. On 6 November 1998 the court served the expert report on the parties and ordered that they submit their observations thereon within 14 days. On 18 November 1998 the applicant and other parties to the proceedings challenged the expert opinion and accused B.J. of prolonging the proceedings.

36. A hearing held on 23 March 1999 was adjourned at the request of the applicant's lawyer due to the possibility of reaching a friendly settlement.

37. The court held a further hearing on 30 April 1999. The applicant's lawyer informed the court that reaching a friendly settlement was impossible due to the conduct of B.J.

38. On 14 May 1999 the court closed the examination of the case and informed the parties that the final decision would be delivered on 24 May 1999. It later resumed the examination of the case and listed a hearing for 8 September 1999.

39. On 22 September 1999 the District Court gave a decision (*postanowienie*). On 13 December 1999 B.J. appealed against the first-instance decision to the Kielce Regional Court (*Sąd Okręgowy*).

40. On 27 April 2000 the court held a hearing.

41. On 15 May 2000 the court dismissed B.J.'s request for exemption from court fees.

42. On 27 June 2000 the court ordered that three fresh expert reports be prepared within one month. They were submitted to the court on 20 July and 30 August 2000 respectively.

43. On 18 October 2000 the court held a hearing and ordered the parties to submit their observations on the expert reports within 14 days. It adjourned the hearing *sine die* at the joint request of B.J. and his lawyer.

44. On 1 December 2000 the court held the hearing and heard the experts. It closed the examination of the case and announced that the decision would be delivered on 15 December 2000. On the same day the court resumed the examination of the case following the requests of B.J. and his lawyer and adjourned the hearing *sine die*.

45. The next hearing listed for 25 January 2001 was adjourned at the request of B.J.'s lawyer as B.J. was ill.

46. On 12 April 2001 the court held a hearing. It gave a decision (*postanowienie*) and dismissed the appeal.

47. On 23 June 2001 B.J. lodged a cassation appeal with the Kielce Regional Court. On 12 July 2001 the court rejected the cassation appeal. On 28 August 2001 B.J. appealed. On 28 February 2002 the court dismissed B.J.'s appeal and the decision became final.

THE LAW

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

48. The applicant complained that the length of the proceedings in her case exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention which, in so far as relevant, reads:

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

49. The Government contested this view.

A. Period to be taken into consideration

50. The Court first observes that the proceedings started on 10 June 1988, when the applicant lodged her application with the Kielce District Court. However, the period to be taken into consideration began not on that date, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. The proceedings ended on 28 February 2002. The

total length of the applicant's case accordingly amounts to 13 years, 8 months and 18 days, of which the period of 8 years, 9 months and 27 days, falls within the Court's jurisdiction *ratione temporis*.

51. In order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 1 May 1993 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999, unreported).

B. Reasonableness of the length of the proceedings

52. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, for instance, *Humen v. Poland* cited above, § 60; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Complexity of the case

53. The Government contended that the case had been complex as it had required the taking of expert evidence in order to establish several circumstances of the claim and their legal consequences.

54. The applicant disagreed with the Government and argued that the case had not been complex. She stated that the number of expert opinions obtained during the proceedings had been excessive.

55. The Court observes that the present case concerned an application for distribution of the inheritance. It accepts that the need to take expert evidence on several occasions could have complicated the procedure to some extent but not significantly. 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 that the present case was complex.

2. Conduct of the applicant

56. The Government maintained that the applicant had contributed to the length of the proceedings. They submitted that on several occasions she had requested the court to obtain expert opinions. Furthermore, they referred to the fact that in August and November 1998 the applicant had challenged the expert opinions. The Government also observed that in March 1999 the applicant's lawyer had requested the court to adjourn a hearing. However, they acknowledged that there had been other participants to the proceedings who had contributed to the prolongation of the case. They pointed out that B.J.'s conduct had contributed substantially to the length of the proceedings.

57. The applicant argued that she had not contributed to the length of the proceedings.

58. The Court observes that it is true that the applicant twice challenged the expert reports and that on one occasion her lawyer requested the court to adjourn a hearing. However, it does not appear that those events significantly prolonged the trial. Moreover, the Court accepts that the applicant's requests for evidence to be taken could have contributed to the length of the proceedings. However, the Government have demonstrated that it was not only the applicant who asked the court to take evidence. Furthermore, the court was not obliged to comply with all parties' requests as it was for the court to decide which evidence was pertinent to the case.

In any event, the Court is not convinced that these delays were such as to explain the overall length of the proceedings.

3. Conduct of the judicial authorities and what was at stake for the applicant.

59. The Government considered that the relevant courts had acted with due diligence in handling the applicant's case.

60. The applicant stated that the courts had failed to handle her case with due diligence. In particular, she pointed out that on 27 March 1996 the court had ordered inspection of the site, which had taken place a few months later, namely on 26 August 1996. Moreover, she submitted that after the inspection of the site, the next hearing had been held eleven months later. The applicant also referred to the delay in the proceedings from 23 March 1998 to 23 March 1999.

61. The Court notes that it took eleven years and three months for the trial court to decide the case in the first-instance proceedings (see paragraphs 8-39 above). The Court further notes that in 1994 only two hearings effectively took place. Moreover, there were two periods before the Kielce District Court, during which no hearings on the merits were held. The first one lasted from 27 March 1996 to 14 July 1997 (see paragraphs 21 and 25 above). The second period of inactivity was between 23 March 1998 and 23 March 1999 (see paragraphs 32-36 above).

62. The Court also observes that the domestic authorities acknowledged that the proceedings had not been conducted speedily. In particular, in reply to the applicant's complaint about the conduct of the proceedings, the President of the Cracow Court of Appeal of 13 May 1997 acknowledged that the proceedings had been slowed down as a result of changes to the rapporteurs (see paragraph 23 above).

63. Furthermore, the Court recalls that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to decide cases within a reasonable time (see, among other authorities, the *Duclos v. France* judgment of 17 December 1996, *Reports* 1996-VI,

pp. 2180–81, § 55 *in fine*). Therefore the delay in the proceedings must be mainly attributed to the national authorities.

64. Having regard to the circumstances of the case and taking into account the overall duration of the proceedings, the Court finds that the “reasonable time” requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed a total amount of PLN 50,000 in respect of pecuniary and non-pecuniary damage. In particular, she referred to a nervous breakdown, which in her view resulted from the delay in deciding her case.

67. The Government considered that the amount claimed was excessive. They asked the Court to rule that finding a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

68. The Court accepts that the applicant has certainly suffered non-pecuniary damage, such as distress and frustration resulting from the undue prolongation of her case, which is not sufficiently compensated by the finding of violation of Article 6 §1 of the Convention. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 under this head.

B. Costs and expenses

69. The applicant also claimed PLN 10,000 by way of legal costs and expenses incurred in the domestic court proceedings. In particular, she submitted specifications of fees charged by her counsel and court experts.

70. The Government submitted that they could not bear any responsibility for the costs and expenses incurred by the applicant during the proceedings before the domestic courts.

71. The Court recalls that to be entitled to an award of costs and expenses under Article 41, the injured party must have incurred them in order to seek, through the domestic legal order, prevention or redress of a violation, to have the same established by the Court or to obtain reparation therefor (see the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, p. 14, § 36). However, it considers that the applicant has not shown that the legal costs and expenses claimed by her were incurred in order to prompt domestic courts to comply with the requirements of Article 6 § 1 (see the *Zimmermann and Steiner v. Switzerland* cited above, pp. 14-15, § 37). The Court accordingly dismisses the claim.

C. Default interest

72. 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], no. 28957/97, § 124, to be published in ECHR 2002-...).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation 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 4,000 (four 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 6 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President