



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

FOURTH SECTION

CASE OF GÓRSKA v. POLAND

(Application no. 53698/00)

JUDGMENT

STRASBOURG

3 June 2003

FINAL

03/09/2003

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 Górska 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 13 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 53698/00) 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, Marianna Górska ("the applicant"), on 6 April 1999.

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

3. The application was allocated to the Third Section of the 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. On 11 December 2001 the Third Section decided to communicate the application 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 case was given priority under Rule 41 of the Rule of Court.

4. Following the change of composition of the Court's Sections (Rule 25 § 1), which took place on 1 November 2001, this case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

5. The applicant was born in 1919 and lives in Bogoria, Poland.

6. On 5 July 1974 the applicant's husband filed with the Staszów District Court (*sąd rejonowy*) an action in which he sought a declaration that he and other relatives inherited the property of his late father.

7. On 30 November 1977 the court issued the relevant decision. Some of the participants in the proceedings lodged an appeal against it.

8. On 14 April 1978 the Tarnobrzeg Regional Court (*sąd wojewódzki*) amended that decision in part and dismissed the remainder of the appeal.

9. On 21 December 1981 the applicant filed with the Staszów District Court a petition in which she requested the division of the inherited property.

10. On 27 August 1992 the court issued a partial decision. The applicant appealed it.

11. On 24 June 1993 the Tarnobrzeg Regional Court quashed that decision and remitted the case for re-examination.

12. On 15 June 1994 the applicant challenged participation in the proceedings of all the judges from the Staszów District Court.

13. On 7 October 1994 the Regional Court dismissed that challenge. She appealed against that decision.

14. On 14 November 1994 the President of the Regional Court, in reply to the applicant's complaint about the excessive length of the proceedings, wrote a letter informing her that the case was very complex and that she contributed to the delay by her numerous petitions.

15. On 24 February 1995 the Rzeszów Court of Appeal (*sąd apelacyjny*) amended the Regional Court's decision of 7 October 1994 in that it excluded four judges from participation in the proceedings.

16. On 29 May 1995 the District Court held a hearing. It stayed the proceedings, because three participants had died. The court ordered the applicant to provide information concerning their legal successors.

17. On 11 December 1995 the court refused the applicant's request to have the proceedings resumed. It noted that she had failed to provide the addresses of the heirs of one of the participants in the proceedings and submitted only that they lived in the United States.

18. On 12 July 1996 the District Court refused the applicant's subsequent request in this respect. It relied, *inter alia*, on the fact that she had failed to specify whether the persons concerned had Polish or American nationality, which made it impossible for the court to serve summonses on them. The applicant appealed that decision.

19. On 7 November 1996 the Regional Court quashed the appealed decision and ordered its re-examination by the District Court.

20. On 7 April 1998 the District Court resumed the proceedings. On the same date it decided to appoint a guardian *ad litem* for absent participants in the proceedings and announce that fact in a newspaper.

21. On 22 September 1998 the President of the District Court informed the applicant that the newspaper which the court had requested to publish the announcement had not replied. The President resolved to undertake necessary steps in order to ensure a more expeditious examination of the case.

22. On 22 June 1999 the Regional Court excluded a judge from participation in the proceedings and transferred the case to the Opatów District Court.

23. On 29 September 1999 four judges from the latter court requested to be excluded from participation in the proceedings due to their personal relations with one of the participants.

24. On 28 July 2000 the applicant was ordered to submit certain pleadings and provide information about the nationality of the participants residing in the United States. In reply, she submitted that she did not know whether they had a Polish nationality.

25. In August 2000 the District Court summoned the applicant to make an advance payment to cover the costs of translating letters rogatory and sending them to the United States. In reply, the applicant stated that the participants residing there spoke fluent Polish and thus translation was not necessary.

26. On 28 September 2000 the court stayed the proceedings, relying on the applicant's failure to comply with its order.

27. On 26 February 2001 the applicant requested that the proceedings be resumed and submitted a letter from the Polish consulate in Chicago, from which it transpired that the persons concerned had not renounced their Polish nationality.

28. On 16 March 2001 the court refused that request. The applicant appealed.

29. On 17 July 2001 the Rzeszów Regional Court transferred the appeal against that decision to the Kielce Regional Court.

30. On 24 October 2001 the latter court rejected the appeal.

31. On 25 January 2002 the Opatów District Court once again refused to resume the proceedings.

32. On 8 February 2002 the applicant appealed against that decision.

33. The proceedings are still pending.

THE LAW

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

34. The applicant complained that the length of the proceedings was 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 contested that argument.

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. The Government's submissions

37. The Government were of the opinion that the case was very complex. They made reference to the uncertain legal status of the property under dispute and separate proceedings in which J. B. and A. B. had acquired ownership through prescription. The Government further pointed out that altogether twelve participants were involved in the proceedings and some of them lived in the United States of America. The addresses and nationalities of the latter were unknown. The Government observed that in the course of the proceedings some of the participants had died. The Government submitted that, according to the Polish Code of Civil Procedure, the trial court was obliged to stay the proceedings when the address of a participant to the proceedings was unknown or he/she died.

38. They were of the view that what was at stake for the applicant was of a pecuniary nature and special diligence was not required of the national authorities. The Government further noted that the property under dispute consisted of two small plots of land and a small farmhouse. They considered that the applicant's pecuniary expectations could not be high.

39. The Government stated that the judicial authorities conducted the proceedings with due diligence. They mentioned difficulties caused by the necessity to exclude a number of judges and the whole Opatów District Court from the examination of the case, because of those judges' personal relations with one of the participants to the proceedings.

40. The Government maintained that the applicant had significantly contributed to the prolongation of the proceedings by her numerous petitions concerning the impartiality of the judges, which had been confirmed in the President of the Regional Court's letter of 14 November 1994. They referred also to the applicant's requests to resume the proceedings submitted to the court without the required documentation.

2. The applicant's submissions

41. The applicant did not agree with the contention that her petitions challenging the participation of the judges had unduly prolonged the proceedings. She pointed out that those petitions had related to the fact that

one of the participants' daughter was a judge in the court conducting the proceedings and by lodging those petitions she had exercised the right to a fair hearing by an impartial tribunal. The applicant observed that only five years after her first challenge the case had been transferred to another court. In her opinion, this showed that the delay in the examination of the case had been caused not by her, but by the courts.

42. The applicant did not accept the Government's submission that she had made it impossible to resume the proceedings since 2000. She stated that the court had summoned her to cover the cost of translation of letters rogatory concerning the participants to the proceedings residing in the United States of America, although those persons were of a Polish nationality and spoke Polish.

43. The applicant noted that the proceedings concerning the ownership title to the property under dispute, to which the Government referred, related to the facts which had taken place before 1 May 1993, and that she had not initiated them. She was of the opinion that the fact that those proceedings had been conducted did not show that the case was complex, as the Government submitted.

44. The applicant did not agree with the opinion that the property under dispute was of low value. She stated that the property consisted of two plots of land and a twelve-room house.

45. The applicant observed that the Government had not mentioned the fact that the proceedings had lasted since 1974.

3. *The Court's assessment*

46. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999, unreported). The Court notes that the proceedings were initiated on 21 December 1981 and therefore on 1 May 1993 they had already lasted over eleven years and four months. It observes that the date referred to by the applicant as the beginning of the proceedings relates to another set of proceedings, which, in the Court's view, cannot be regarded as a part of the proceedings concerning the division of property (see § 9 above).

The period in question has not yet ended. It has thus lasted ten years and twelve days, within the Court's jurisdiction *ratione temporis*.

47. 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).

48. The Court agrees with the Government's contention that the number of participants to the proceedings and the death of some of them affected the complexity of the case. Nevertheless, the case does not appear unusually complex.

49. The Court does not share the Government's view that the applicant unduly prolonged the examination of the case by her petitions challenging the participation of judges. It transpires from the domestic courts' decisions that her challenges eventually proved well-founded. They were aimed, as the applicant noted, at ensuring the impartiality of the court conducting the proceedings. On the other hand, the Court accepts the Government's opinion that the applicant contributed to the delay by her failure to comply with the court's order concerning the letters rogatory. The Court is not in a position to determine the validity of her allegation that that order was wrongful and unnecessary.

50. The Court is not persuaded that the domestic courts have conducted the proceedings with due diligence. Firstly, it shares the applicant's view that the prolonged and inefficient examination of her petitions concerning the impartiality of the judges caused a certain delay. The Court observes that the applicant had to renew her applications and it was only after five years when her original petition was fully granted.

51. The Court further notes that significant periods of inactivity occurred in the course of the proceedings. No hearings were held between 24 June 1993, when the case was remitted for re-examination, and 15 June 1994, when the applicant lodged her first petition concerning the impartiality of the court. The court remained inactive also between 7 November 1996 and 7 April 1998, as well as between 29 September 1999 and 28 July 2000.

52. Having regard to the applicant's age, the Court cannot accept the Government's opinion that special diligence was not called for in the present case (see *Dewicka v. Poland*, no. 38670/97, § 55, 4 April 2000, unreported).

53. Assessing the circumstances of the case as a whole, the Court considers that an overall period of over twenty-one years, out of which over ten years fall within its competence *ratione temporis*, exceeds a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 20,000 US dollars in respect of non-pecuniary damage. She submitted that the amount claimed relates to suffering and distress caused by the excessive duration of the proceedings.

57. The Government considered the applicant’s claims exorbitant.

58. The Court is of the view that the applicant can reasonably be considered to have suffered non-pecuniary damage on account of the length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the case and deciding on an equitable basis, the applicant should be awarded 6,500 euros.

B. Costs and expenses

59. The applicant did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

60. 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. 28957/95, § 124, to be published in ECHR 2002-VI).

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 6,500 (six thousand five hundred euros) in respect of non-pecuniary damage to be converted into Polish zlotys 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 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 3 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President