



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

FOURTH SECTION

CASE OF R.W. v. POLAND

(Application no. 41033/98)

JUDGMENT

*(This version has been rectified under article 81 of the Rules of Court
on 17 September 2003)*

STRASBOURG

15 July 2003

FINAL

15/10/2003

*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.W. v. Poland,

The European Court of Human Rights (Fourth 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 24 June 2003,

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

PROCEDURE

1. The case originated in an application (no. 41033/98) 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 a Polish national, R.W. ("the applicant"), on 24 December 1997.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged that the proceedings in his civil case had exceeded a reasonable time.

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 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.

6. 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).

7. By a decision of 8 October 2002 the Court declared the application admissible.

THE FACTS

8. The applicant was born in 1940 and lives in Warsaw.

9. In March 1982 the applicant became divorced.

10. On 30 September 1982 his former wife filed with the Warsaw District Court (*Sąd Rejonowy*) a request for the partition of the property of the spouses. The request related to 147 items and a shared flat in a housing co-operative building.

11. The Government submitted that between 27 December 1982 and 2 December 1987 the court held 19 hearings. The applicant stated that one of the hearings referred to by the Government had never been held and four others had been only *in camera* sittings.

12. In 1985 and 1986 the court ordered six expert opinions. According to the Government, on an unspecified date after 2 December 1987 the case-file was lost.

13. In 1992 the applicant lodged a further request for the partition of the property. He informed the Warsaw District Court that the place of residence of his former wife was unknown and it was impossible to bring her before the court. The applicant maintained that he had had difficulties in establishing her place of residence. The court appointed a guardian *ad litem* for her. On 22 May 1992 it gave judgment.

14. The Government submitted that after the completion of those proceedings the applicant had formally reported his former wife's departure to Germany.

15. In December 1992, after her return to Poland, the applicant's former wife requested the re-opening of those proceedings, relying on the applicant's misinformation as to the alleged lack of knowledge of her residence in Germany. On 22 July 1993 the Warsaw District Court quashed the decision issued in those proceedings.

16. In January 1994 the lost case-file was found. The court held hearings on 14 January, 4 March, 16 May, 5 August and 14 November 1994. The Government submitted that the applicant had failed to attend the hearings of 14 January, 4 March and 16 May 1994. The applicant maintained that he had been present at the hearing on 14 January 1994 and that his absence on 16 May 1994 had been justified.

17. The court held a hearing on 12 June 1995.

18. On 18 July 1995 the court *ex officio* made attempts aimed at converting the disputed flat into smaller ones. Between July 1995 and January 1996 it enquired with various authorities as to possible solutions to the dispute.

19. The hearing scheduled for 30 September 1996 was adjourned because of the absence of the applicant's lawyer. The applicant submitted that his lawyer had had an operation on his heart.

20. Further hearings were held on 6 January, 14 April and 18 September 1997. According to the applicant, the hearing of 18 September 1997 was in fact an *in camera* sitting.

21. The applicant requested the adjournment of the hearing scheduled for 30 January 1998.

22. Subsequent hearings were held on 25 May 1998 and 25 February 1999, as well as on 7 January and 3 March 2000.

23. On several occasions the applicant's former wife failed to attend hearings or her lawyer failed to submit certain documents or pleadings. The court ordered expert opinions concerning the value of objects located in the flat of the applicant and his former wife, their cars and jewellery.

24. On 25 May 2000 the applicant learnt that the case-file had been lost again. It was subsequently found.

25. The applicant failed to attend the hearing scheduled for 18 December 2000.

26. According to the Government, the hearing scheduled for 19 April 2001 was adjourned at the applicant's request. He submitted that no hearing had been scheduled for that day.

27. The court held a hearing on 11 May 2001.

28. At the hearing held on 21 September 2001 it ordered an expert opinion.

29. Hearings were held on 11 February and 14 November 2002, as well as 17 January 2003.

30. On 31 January 2003 the court gave judgment.

THE LAW

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

31. 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 ... hearing within a reasonable time by [a] ... tribunal...”

1. The Government's submissions

32. The Government were of the opinion that the case was very complex. They submitted that the domestic court had had to divide property accumulated by the spouses in the course of several years of marriage. The Government made reference to the list of 148 items submitted by the

applicant's former wife. They emphasised that only a limited number of those objects had existed at the moment of the initiation of the proceedings.

33. The Government pointed out that the main item under dispute was the flat and the parties had excluded the possibility of sharing that flat. They mentioned a number of expert opinions which had had to be obtained in the course of the proceedings. The Government observed that the parties to the proceedings on several occasions had challenged those opinions.

34. The Government submitted that the applicant had contributed to the delay. They made reference to the applicant's failure to attend the hearings held on 14 January, 4 March and 16 May 1994, as well as on 30 January 1998, 18 December 2000 and 19 April 2001.

35. The Government were of the view that the District Court had shown due diligence in conducting the proceedings. They pointed out that the court had tried to encourage the parties to reach a friendly settlement. The court also consulted various authorities in order to find the best solution to the dispute.

2. The applicant's submissions

36. The applicant observed that he had challenged the expert opinions referred to by the Government because, as a result of high inflation, they had quickly become out-of-date.

37. The applicant maintained that he had attended the hearing of 14 January 1994. He further stated that no hearing had been scheduled for 19 April 2001.

38. The applicant made reference to numerous periods when the court remained inactive. He mentioned the periods between 14 November 1994 and 12 June 1995, between 12 June 1995 and 30 September 1996, between 25 May 1998 and 7 January 2000, as well as between 3 March 2000 and 18 December 2000.

3. The Court's assessment

39. 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 30 September 1982 and therefore on 1 May 1993 they had already lasted 10 years, 7 months and 1 day. The period in question ended on 31 January 2003. It thus lasted 9 years and 9 months, within the Court's jurisdiction *ratione temporis*.

40. 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).

41. The Court agrees with the contention that the case was complex to a certain extent and notes that a number of expert opinions were ordered.

42. It sees nothing to suggest that the applicant's conduct significantly contributed to the delay in the examination of the case.

43. The Court observes that the Government failed to supply explanations as to the disappearances of the case-file and the periods of inactivity referred to by the applicant.

44. Assessing the circumstances of the case as a whole, the Court considers that an overall period of over twenty years, out of which nine years and nine months within its competence *ratione temporis*, exceeds a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 240,000 Polish zlotys as compensation for pecuniary and non-pecuniary damage. He referred to expenses incurred in connection with the domestic proceedings, such as lawyers' fees and court fees, as well as expenses relating to the disputed flat. The applicant submitted that the lengthy proceedings had led to the deterioration of his health. He also claimed a right to a flat. The applicant did not provide any documents in support of his claims.

48. The Government noted that there was no causal link between the applicant's claim for pecuniary damage and the alleged violation of the Convention. They regarded the applicant's claims as exorbitant. The Government considered that finding a violation in the case at issue would provide in itself just satisfaction. Alternatively, they requested the Court to award compensation for non-pecuniary damage on the basis of its case-law.

49. The Court agrees with the Government's contention that there is no connection between the damage described by the applicant and the length of the proceedings complained of. The Court therefore dismisses the applicant's claim for pecuniary damage.

50. It 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 8,000 euros (EUR).

B. Costs and expenses

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

C. Default interest

52. 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. *Holds* 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 8,000 (eight thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys 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 15 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President