



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

FOURTH SECTION

CASE OF M.M. AND E.M.M. v. POLAND

(Application no. 76158/01)

JUDGMENT
(Friendly Settlement)

STRASBOURG

29 July 2003

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

In the case of M.M. and E.M.M. 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 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 76158/01) 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 two Polish nationals, Mr M.M. and Ms E.M.M. ("the applicants"), on 8 December 2000.

2. The applicants, who are brother and sister, were represented by Mrs R.D., their grandmother.

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

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

5. On 19 November 2002 the Court 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 President of the Chamber further decided to authorise the anonymity of the applicants and their representative (Rule 47 § 3 of the Rules of Court).

6. On 7 April and 15 May 2003 the Government and the applicant respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. The applicants, Mr M.M. and Ms E.M.M., were born in 1988 and 1990 respectively. They live in Ostrołęka, Poland.

8. On 26 August 1994 the applicants' mother was murdered by Mr J.M. – her husband and the father of the applicants. Subsequently, Mrs R.D. was appointed as the applicants' foster parent. Mr J.M. was deprived of his parental rights and on 15 October 1998 the Warsaw Regional Court convicted him of murder. It appears that he was later declared unworthy of inheriting his wife's estate and that the applicants were declared her heirs.

9. On 14 June 1996 the applicants initiated before the Warsaw District Court (*Sąd Rejonowy w Warszawie*) civil proceedings concerning division of their late mother's estate and the matrimonial property (*o podział majątku dorobkowego i dział spadku*). Mr J.M. was a party to those proceedings.

10. Subsequently, Mrs R.D. applied for an interim measure to appoint her as an administrator of a flat in Warsaw which belonged to the applicants' parents and was the most valuable part of their matrimonial property. It had been unoccupied since 1994 but Mrs R.D. had been paying all maintenance costs and wanted to prevent its further destruction, as the flat had been burgled on several occasions.

11. The first hearing was held on 19 December 1996.

12. On 5 February 1997 the Warsaw District Court, sitting *in camera*, allowed Mrs R.D.'s application for an interim measure. However, following Mr J.M.'s appeal, on 27 May 1997 the Warsaw Regional Court (*Sąd Wojewódzki w Warszawie*) quashed this decision and dismissed the application.

13. From 1 October 1997 to 28 January 1999 the District Court listed five hearings. Most of them were adjourned.

14. On 8 November 2000 the court, sitting *in camera*, stayed the proceedings.

15. The applicants appealed against this decision and on 14 December 2000 the Warsaw District Court allowed their appeal and quashed it.

16. Between October 1998 and July 2001 no hearings were held.

17. On 25 July 2001 the parties reached a friendly settlement according to which the applicants were granted the flat and their father kept all flat's equipment and a car.

18. Mr J.M. lodged an appeal against the settlement but on 20 February 2002 the Warsaw Regional Court dismissed it.

THE LAW

19. The applicants complained under Article 6 § 1 of the Convention that the proceedings in their case had exceeded a reasonable time. They further complained, under Article 1 of Protocol No. 1 to the Convention, about a violation of their property rights due to the length of the proceedings.

A. Admissibility

20. 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. The Court therefore declares it admissible.

B. Solution reached

21. On 7 April 2003 the Court received the following declaration signed by the respondent Government:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Poland offer to pay 12,000 PLN (twelve thousand Polish zlotys) to Ms R. D. (legal representative of M.M. and E.M.). 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 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 further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

22. On 15 May 2003 the Court received the following declaration signed by the applicant's representative:

“I note that the Government of Poland are prepared to pay me the sum of 12,000 PLN (twelve thousand 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.

I accept the proposal and waive any further claims against Poland in respect of the facts of this application. I 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 I have reached.

I 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.”

23. The Court takes note of the agreement reached between the parties. 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 and 4 of the Rules of Court).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Decides* to strike the case out of the list;
3. *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 29 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President