



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

FOURTH SECTION

CASE OF POREMBSKA v. POLAND

(Application no. 77759/01)

JUDGMENT

STRASBOURG

14 October 2003

FINAL

14/01/2004

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 Porembska v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 77759/01) 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 a Polish national, Mrs Zofia Porembska ("the applicant"), on 20 November 2000.

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

3. On 19 November 2002 the Fourth Section decided to communicate the complaint concerning the length of the proceedings 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 FACTS

4. The applicant was born in 1924 and lives in Warsaw, Poland.

5. On 12 July 1995 the applicant's brother initiated court proceedings before the Warsaw District Court (*Sąd Rejonowy w Warszawie*) in order to obtain a decision declaring heirs to his late mother's estate. The applicant's brother applied to establish heirs on the basis of a will allegedly prepared by his mother.

6. On 13 February 1996 the applicant challenged the will.

7. The hearing scheduled for 4 April 1996 was adjourned upon the request filed by the applicant's lawyer.

8. Subsequently, hearings were held on 16 May and 5 September 1996 at which the court allowed the parties' applications to hear witnesses.

9. The hearings scheduled for 19 November, 16 December 1996 and 23 February 1997 were adjourned because the applicant's brother was ill.

10. On 18 June 1997 the court stayed the proceedings since the applicant's brother had died.

11. On 13 November 1997 the applicant requested the court to resume the proceedings because the proceedings concerning her brother's inheritance had ended and in consequence the reason for staying the proceedings had ceased to exist.

12. On 10 January 1998 the court resumed the proceedings. Ms M.P.P., the daughter of the applicant's late brother and his heir, joined the proceedings.

13. On 23 April and 10 July 1998 the court held hearings. The trial court heard a witness requested by Ms M.P.P.

14. The hearing scheduled for 5 November 1998 was adjourned.

15. Subsequently, the court held hearings on 21 January and 19 April 1999. Ms M.P.P. applied to the court to prepare an expert opinion and the applicant's lawyer asked the court not to schedule any hearings until September 1999.

16. The next hearing was held on 16 September 1999.

17. The hearings scheduled for 4 November 1999 and 20 January 2000 were adjourned due to the illness of the applicant's lawyer and Ms M.P.P.

18. On 6 April, 21 September and 21 December 2000 the court held hearings. Both parties requested preparation of an expert opinion.

19. On 5 April 2001 the court held a hearing at which it heard the parties. The court requested a hospital to provide documents concerning the health of the applicant's late mother.

20. On 26 April 2001 the court received the requested documents.

21. On 18 June 2001 the court, sitting *in camera*, ordered preparation of an expert opinion. The opinion was submitted to the court on 12 February 2002.

22. On 23 April 2002 the applicant's counsel informed the court that he had ceased to represent her and would be absent at the next hearing scheduled for 26 April 2002. The court appointed another lawyer for the applicant, however, the latter refused to accept the appointment.

23. On 4 September 2002 the court ordered the Bar Association to designate a lawyer to represent the applicant.

24. Between 6 April 2001 and 25 April 2002 no hearings were held.

25. The hearings scheduled for 26 April and 5 September 2002 were adjourned because the applicant's new lawyer failed to appear.

26. On 20 November 2002 the applicant's lawyer informed the court that she would be absent at the next hearing scheduled for 21 November 2002.

27. At the hearing held on 21 November 2002 the court decided to inform the Bar Association about the continued absence of the lawyer at the hearings.

28. Subsequently, the Warsaw District Court scheduled a hearing for 24 April 2003.

29. The proceedings are pending before the Warsaw District Court.

THE LAW

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

30. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement 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...”

31. The Government contested that argument.

32. The period to be taken into consideration began on 12 July 1995 and has not yet ended. It has already lasted eight years and three months.

A. Admissibility

33. 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 will therefore declare the case admissible.

B. Merits

1. The submissions before the Court

34. The Government submitted that the case was rather a complex one. In particular, the Government observed that the trial court had to order one expert opinion and that during the course of the proceedings one of the participants died.

35. As regards the applicant’s conduct the Government was of the opinion that she contributed to the length of the proceedings. They submitted that the applicant had applied to adduce new evidence and on several occasions the hearings had been adjourned due to her or her lawyer’s absence. The Government further acknowledged that the other party was also responsible for the delay in examining the case.

36. With regard to the conduct of the domestic authorities the Government argued that they showed due diligence and there were no

delays attributable to the trial court. The Government were of the opinion that in the instant case no special diligence was required.

37. Finally, the Government submitted that what was at stake for the applicant was of a minor and pecuniary nature solely.

38. The applicant did not agree with the Government's submissions and argued that the domestic authorities were not acting diligently and speedily.

39. Lastly, the applicant submitted, that given her great age and a difficult financial situation, the protracted length of the inheritance proceedings caused enormous hardship for her.

2. The Court's assessment

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 and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

41. The Court considers that the case was not particularly difficult to determine and the information before it does not indicate that the applicant by her behaviour contributed in a significant way to the length of the proceedings.

42. As regards the conduct of the domestic authorities the Court notes that the case has been pending before the Warsaw District Court since its introduction in July 1995 and no decision has been given yet. The Court observes that substantial periods of inactivity occurred in the course of the proceedings; in particular, no hearings were held between 6 April 2001 and 25 April 2002 (see paragraph 24 above). Although during that time the domestic court ordered an expert opinion, it does not explain such a long delay between the hearings.

43. Furthermore, the Court is of the view that what was at stake for the applicant in the domestic litigation was of significant importance for her. The Court notes that the applicant due to her age and financial situation, was in a vulnerable position and 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).

44. The Court considers that, in particular circumstances of the instant case, a period of eight years and three months without any decision having yet been reached exceeds a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 200,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

47. The Government submitted that the applicant’s claim was excessive.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

49. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the instant case and deciding on equitable basis, the applicant should be awarded EUR 6,000 under the head of non-pecuniary damage.

B. Default interest

50. 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.

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 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the 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;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President