



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

FOURTH SECTION

CASE OF I.P. v. POLAND

(Application no. 77831/01)

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 I.P. 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. 77831/01) 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 I.P. ("the applicant"), on 27 July 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 declared the application partly inadmissible and 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 President of the Chamber further decided to authorise the anonymity of the applicant (Rule 47 § 3 of the Rules of Court).

THE FACTS

4. The applicant was born in 1961 and lives in Ciechanów, Poland.

5. In August 1992 the applicant, at that time thirty-years-old, underwent gynaecological surgery. A few days later, due to post-operative complications, the applicant had to undergo another operation during which her uterus and one ovary were removed.

6. In October 1992 the applicant requested the prosecution service to initiate criminal proceedings against the doctors and the hospital. On 15 February 1996 the proceedings were finally discontinued.

7. On 29 April 1993 the applicant lodged with the Warsaw Regional Court (*Sąd Wojewódzki w Warszawie*) a civil action for compensation against the hospital. She claimed that she was a victim of medical malpractice which deprived her of a possibility of having more children and caused enormous psychological suffering. She requested compensation of PLN 50,000.

8. On 4 May 1993 the Warsaw Regional Court exempted the applicant from the court fees.

9. On 5 July 1994 the court held the first hearing at which the applicant was heard. The court requested from the prosecution service the case-file concerning the criminal case against the doctors.

10. On 25 January 1995 the trial court stayed the proceedings because the prosecution service refused to provide the file of the criminal case while the criminal proceedings were pending.

11. On 21 June 1996 the trial court resumed the civil proceedings.

12. On 23 August 1996 the court held a hearing which had to be adjourned because of the absence of the defendant's representative.

13. On 27 November 1996, 15 January and 12 February 1997 the trial court held hearings at which it heard witnesses.

14. On 2 April 1997 the court, sitting *in camera*, ordered an expert opinion. The opinion was prepared on 17 July 1997.

15. At the hearing which was held on 26 September 1997 the court heard an expert witness.

16. On 21 October 1997 the applicant requested the court to order the preparation of another expert opinion.

17. In February 1998 the applicant dismissed her lawyer because she could not any longer afford this expense. It appears that she applied for a court-appointed lawyer but her application was not examined.

18. On 13 March 1998 the court, sitting *in camera*, allowed the applicant's application for a second expert opinion. Subsequently, the applicant informed the court that she wished to cross-examine the expert witnesses.

19. On 15 July 1998 the court, sitting *in camera*, dismissed the applicant's request to exempt her from the costs of the expert opinion.

20. On 30 September 1998 the applicant received the expert opinion and again requested the court to hear expert witnesses.

21. In May 1999 the court asked the applicant to designate the defendant because after the administrative reform the Mazowsze Governor had become a competent authority to represent the State Treasury. The applicant complied with this order. She also asked the trial court to call as a co-defendant the doctor who performed the surgery, but on 8 December 1999 the court refused her application.

22. Between 27 September 1997 and 6 February 2000 no hearings were held.

23. On 7 February 2000 the court held a hearing. The applicant was informed that the court had lost her application to hear expert witnesses and her questions to them. The new date for cross-examination was set for 29 June 2000 before the Kraków Regional Court.

24. The applicant went to Kraków to take part in the hearing scheduled for 29 June 2000, however, it was adjourned because the expert witnesses were not properly notified.

25. On 19 October and 16 November 2000 the expert witnesses were heard before the Kraków District Court. The applicant who could not attend that hearing, submitted her questions in writing.

26. On 8 January 2001 the trial court held the last hearing.

27. On 5 February 2001 the Warsaw Regional Court gave judgment. It found no negligence on the part of doctors. Nevertheless, the applicant was awarded PLN 10,000 as compensation for her suffering.

28. In April 2001 the applicant lodged an appeal against this judgment.

29. On 28 February 2002 the applicant's appeal was rejected by the Warsaw Court of Appeal (*Sąd Apelacyjny*) as lodged out of time. The applicant appealed against it and on 20 May 2002 the Warsaw Court of Appeal, sitting *in camera*, partly exempted her from the court fees in the appeal procedure.

30. On 11 October 2002 the Supreme Court (*Sąd Najwyższy*) dismissed her appeal against the Court of Appeal's decision of 28 February 2002.

THE LAW

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

31. 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..."

32. The Government contested that argument.

33. The period to be taken into consideration began on 1 May 1993, when the recognition by Poland of the right of individual petition took effect and ended on 11 October 2002. It thus lasted nine years, five months and ten days.

A. Admissibility

34. The Court notes that this complaint 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*

35. The Government submitted that the case had been complex which made it necessary for the domestic court to have recourse to several expert opinions.

36. As regards the conduct of the applicant, the Government agreed that she did not contribute to the length of the proceedings. However, in the Government's opinion, what was at stake for the applicant was already satisfied by the domestic courts because the trial court had awarded her compensation.

37. With respect to the conduct of domestic authorities, the Government agreed that between September 1997 and February 2000 there had been a period of "little activity" on the part of the trial court. Despite that, in the Government's opinion the domestic courts demonstrated due diligence in conducting the case and "showed a positive attitude towards the applicant" by exempting her from the court-fees and allowing her applications to prepare expert opinions.

38. The applicant disagreed with the Government's submissions. In particular, she contended that given the nature of her litigation there was a lot at stake for her.

2. *The Court's assessment*

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

40. The Court considers that the case involved a certain degree of complexity as it required the taking of expert evidence. However, the complexity does not justify the overall length in deciding the case.

41. The Court further observes that it is not disputed that the applicant did not contribute to the length of the proceedings.

42. The Court is of the opinion that the conduct of the Warsaw Regional Court, which was examining the case for almost eight years, contributed to the delay in the proceedings. Moreover, the trial court was responsible for a substantial period of inactivity lasting two years and five months (see paragraph 22 above). Although, during that time the trial court took certain action, such as ordering expert opinions, this does not explain such a long delay between the hearings.

43. Finally, the Court considers that what was at stake for the applicant in the domestic litigation was of significant importance to her.

44. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of nine years, five months and ten days 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 PLN 100,000 in respect of non-pecuniary damage.

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

48. 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 9,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant also claimed PLN 26,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

50. Again, the Government submitted that the applicant's claim was excessive.

51. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant duly documented only her expenses on correspondence in connection with the Strasbourg proceedings. Accordingly, regard being had to the information in its possession and the above criteria, the Court awards the applicant EUR 30.

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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the proceedings 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, the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 30 (thirty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 14 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President