



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

FOURTH SECTION

CASE OF CIBOREK v. POLAND

(Application no. 52037/99)

JUDGMENT

STRASBOURG

4 November 2003

FINAL

04/02/2004

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 Ciborek v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORRERO BORRERO, *judges*,
and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,
Having deliberated in private on 14 October 2003,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 52037/99) 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, Monika Ciborek (“the applicant”), on 5 December 1998.

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

3. On 4 December 2001 the Fourth 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 FACTS

4. The applicant was born in 1953 and lives in Nowogard, Poland.

1. Proceedings concerning rent

5. The applicant co-owned an estate. On 15 January 1988 she filed with the Goleniów District Court (*sąd rejonowy*) an action against the other co-owners for overdue rent and the recovery of possession of some property located on that estate.

6. On 30 June 1992 the court gave judgment, in which it dismissed the action.

7. On 9 March 1993 the Szczecin Regional Court (*sąd wojewódzki*) dismissed the applicant's appeal against that judgment.

8. On 12 May 1993 she requested the reopening of the proceedings, submitting that she had not been notified of the appellate hearing.

9. On 16 September 1993 the Regional Court quashed the judgment of 9 March 1993 and a part of the District Court's judgment. It remitted the part of the case concerning rent for re-examination.

10. On 24 November 1994 the District Court summoned the applicant to specify her claim. On 16 February 1995 the court, having received the applicant's response, requested her to specify it once more.

11. On 28 March 1995 the case was transferred to the Szczecin Regional Court, which was competent to examine it as a court of the first-instance.

12. On 31 October 1995 it held a hearing. The applicant withdrew her claim against one of the co-owners and raised a claim against the Goleniów District Office (*Urząd Rejonowy*), which also co-owned the disputed property.

13. On 5 September 1996 the court held a hearing. On the same day it summoned the Goleniów District Office (*Urząd Rejonowy*) to participate in the procedure as the defendant.

14. On 18 July 1997 the court stayed the proceedings after the applicant's failure to specify her claim within the set time-limit. The applicant did not appeal against that decision.

15. On 8 August 1997 she requested that her legal-aid lawyer be replaced with another one.

16. On 17 May 1999 the applicant's lawyer asked the court to resume the examination of the case. On 26 May 1999 the court summoned the applicant to specify her claim and identify the defendant. The applicant submitted that that order was not served on her. She stated that she had been unable to comply with the court order because of difficulty in assessing the value of the property the possession of which she had sought.

17. By 28 August 2003 the court had not resumed the proceedings.

2. Proceedings concerning the dissolution of co-ownership

18. On 6 June 1991 the applicant filed with the Goleniów District Court an action in which she requested that the co-ownership of an estate be dissolved.

19. On 17 December 1993 and 12 January 1994 the court held hearings.

20. In March 1994 an expert opinion was prepared.

21. The Government submitted that on 22 March 1994 the applicant challenged that opinion and changed her statement of claim. The applicant stated that she had never challenged that opinion and that the modification of her claim had only followed the conclusions of the expert opinion.

22. On 19 April 1995, as well as 12 June and 17 July 1996 the court held hearings. In June 1996 the applicant changed her statement of claim.

23. On 12 November 1996 the court exempted the participants to the proceedings from fees relating to an expert opinion. It also ordered the preparation of an opinion.

24. In 1997 an expert proposed two projects for the division of the estate. The applicant requested a correction to those projects. The Goleniów District Office, being one of the co-owners of the disputed property, did not accept the correction proposed by applicant.

25. On 17 November 1997 the court issued a decision on remuneration for an expert. In February 1998 that decision was amended.

26. On 20 May and 30 November 1998 hearings were held.

27. On 10 December 1998 an expert opinion was ordered.

28. On 10 February 1999 the court awarded the expert remuneration for the opinion. The applicant appealed that decision. In reply to the court's enquiry, she stated that in fact she intended to challenge that opinion.

29. On 30 April and 17 May 1999 the court held hearings.

30. On 24 May 1999 the applicant challenged the participation of an expert in the proceedings. On 12 July 1999 the court dismissed her challenge. On 19 August 1999 it rejected the applicant's appeal against that decision.

31. On 9 February and 10 April 2000 the court held hearings. It ordered the preparation of another expert opinion. In September an expert informed the court that due to a heavy workload he was unable to prepare that opinion.

32. On 30 November 2000 the court ordered another expert to carry on that opinion. The expert submitted the opinion in February 2001 and an annex to it in June 2001. The applicant submitted that she was served with a copy of that opinion on 24 July 2001. Subsequently, she challenged it.

33. The hearing scheduled for 26 November 2001 was adjourned because of the absence of an expert.

34. On 17 December 2001 the applicant modified her claim.

35. On 19 December 2001 and 11 January 2002 the court held hearings.

36. On 13 February 2002 it gave judgment. The applicant lodged an appeal.

37. On 21 January 2003 the Szczecin Regional Court dismissed her appeal.

THE LAW

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

38. 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...”

39. The Government contested that argument.

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).

A. Proceedings concerning rent

41. 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 15 January 1988. They have therefore already lasted 15 years and 9 months, out of which a period of 10 years, 5 months and 14 days falls within the Court's competence *ratione temporis*.

1. Admissibility

42. 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 it admissible.

2. *Merits*

a. The parties' submissions

43. The Government were of the view that since the applicant had failed to specify her claim and comply with certain procedural requirements, the domestic authorities could not be held responsible for the delay in the examination of the case.

44. The applicant observed that she had been represented by legal-aid lawyers throughout the procedure, with whom she had consulted all documents she had intended for submitting to the court.

The applicant admitted that it had been difficult for her to specify the amount of compensation claimed by her, but it had been caused mainly by the fact that she had had no access to the disputed estate and had been unable to assess damage. She further noted that the legal aid lawyers appointed for her had not been able to represent her, because the court had not scheduled any hearings. It refused her request for the resumption of the proceedings.

b. The Court's assessment

45. The Court considers that the case involves a degree of complexity.

46. It notes that the applicant's conduct has contributed to the prolongation of the proceedings, especially her failure to specify the claim. That failure delayed the proceedings at the end of 1994 and the beginning of 1995. The applicant also sued an additional entity in 1995. The Court observes that since 18 July 1997 the proceedings have been stayed exclusively for reasons relating to the applicant.

47. The Court is not persuaded that the above fact could entirely absolve the domestic authorities from their liability in respect of the length of the proceedings. It, however, agrees with the Government that the primary responsibility for the delay in the proceedings lies with the applicant.

48. The Court therefore finds that there has been no violation of Article 6 § 1 of the Convention.

B. Proceedings concerning the dissolution of co-ownership

49. The Court notes that the proceedings were initiated on 6 June 1991 and ended on 21 January 2003. They therefore lasted 11 years, 7 months and 15 days, out of which a period of 9 years, 8 months and 20 days falls within the Court's competence *ratione temporis*.

1. Admissibility

50. 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 it admissible.

2. Merits

a. The parties' submissions

51. The Government considered that the case was complex. They noted that at least 6 expert opinions and a viewing of the disputed estate had to be ordered. The Government submitted that the applicant's modifications of claims had complicated the case as well.

They were of the opinion that the applicant significantly contributed to the delay in the examination of the case. She challenged all the expert opinions and the participation of an expert in the proceedings. The applicant also frequently changed her claim. The Government stated that her conduct disclosed the features of a vexatious litigant. They made reference to her challenge to the decision concerning remuneration for an expert, which she subsequently changed to a challenge to that expert's opinion.

The Government were of the view that the domestic courts had scheduled hearings at regular intervals.

52. The applicant submitted that she had changed her statement of claim only twice, in March 1994 and December 2001. All her other motions concerned the way she wished the estate to be divided, as she considered that the defendant's proposals would make her plot unusable.

b. The Court's assessment

53. The Court agrees that the case involved a degree of complexity.

54. It sees nothing to suggest that the applicant's conduct can be regarded as vexatious. The Court considers, however, that the applicant had to be aware that some of her motions could lead to delays the consequences of which she would have to bear (see *Malicka-Wąsowska v. Poland* (dec.), no. 41413/98, 5 April 2001).

55. As regards the conduct of the domestic authorities, the Court observes that the District Court did not take any action in the periods: between 12 January 1994 and 19 April 1995, between 19 April 1995 and 12 June 1996, between 12 December 1996 and 17 November 1997, as well as between 19 August 1999 and 9 February 2000. The Court further takes note of the period between 28 April 2000 and 29 June 2001, when the preparation of an expert opinion was delayed by difficulties relating to experts. The Court reiterates that the principal responsibility for the delay

due to the expert opinions rests ultimately with the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, p. 14, § 32).

56. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 520,000 zlotys (PLN) in respect of pecuniary damage. She submitted that that amount corresponded to the value of property lost by her. The applicant further claimed 100,000 zlotys as compensation for suffering and distress caused by the length of the proceedings.

59. The Government considered that there was no link between the amount claimed in respect of pecuniary damage and the violation alleged by the applicant. They further stated that that amount was exorbitant and supported by no evidence. The Government was of the opinion that the applicant's claim for non-pecuniary damage was excessive and requested the Court to award 2,500 euros (EUR) to her.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, 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 concerning the dissolution of co-ownership. Accordingly, the Court considers that, in the particular circumstances of the case and deciding on an equitable basis, the applicant should be awarded EUR 5,500.

B. Costs and expenses

61. The applicant also claimed PLN 786.60 for the costs and expenses incurred before the domestic courts and PLN 1,334.90 for those incurred before the Court. The applicant did not supply any documents acknowledging those costs and expenses.

62. The Government did not comment on those claims.

63. Having regard to the fact that the applicant quantified her claim for domestic costs and expenses, but failed to submit relevant fee notes or bills, the Court dismisses it. However, the Court acknowledges that the applicant must have incurred certain costs in connection with the proceedings before it (see *Migoń v. Poland*, no. 24244/94, § 95, 25 June 2002) and awards her, on an equitable basis, EUR 300.

C. Default interest

64. 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 complaint relating to the length of the proceedings concerning rent admissible;
2. *Declares* the complaint relating to the length of the proceedings concerning the dissolution of co-ownership admissible;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in the proceedings concerning rent;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in the proceedings concerning the dissolution of co-ownership;
5. *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
 - (i) EUR 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage and
 - (ii) EUR 300 (three hundred euros) in respect of costs and expenses 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President