



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

FOURTH SECTION

CASE OF GRELA v. POLAND

(Application no. 73003/01)

JUDGMENT

STRASBOURG

13 January 2004

FINAL

13/04/2004

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 Grela 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*,

Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 2 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 73003/01) 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 Genowefa Grela (“the applicant”), on 22 June 1999.

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

3. On 30 April 2002 the Court 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 FACTS

4. The applicant was born in 1936 and lives in Zamość, Poland.

5. The applicant’s father and mother died in 1982 and 1983 respectively. On 2 March 1984 the Zamość District Court (*Sąd Rejonowy*) declared that the applicant and her three brothers were to inherit their estate. On 17 September 1985 the applicant filed an application for distribution of the estate with the Zamość District Court. From 30 October 1985 to 27 June 1991 the court held thirty six hearings. It also obtained five expert reports.

6. On 28 September 1993 the court held a hearing during which it heard evidence from the applicant and one of her brothers. The court held a further hearing on 25 October 1993.

7. On 8 November 1993 the court closed the examination of the case and informed the parties that a preliminary decision would be delivered on 22 November 1993. It later resumed the examination of the case and listed a hearing for 24 January 1994. At that hearing, the court again heard evidence from the applicant and one of her brothers.

8. In April 1994 the applicant personally went to the court's registry and asked the President of the Zamość District Court to fix a date for a hearing as soon as possible; she also complained about the slow progress in the proceedings.

9. On 16 May 1994 the court held a hearing, heard five witnesses and ordered an expert to prepare a report. On 20 June 1994 the expert submitted his report to the court. On 12 December 1994 and 16 January 1995 the court held further hearings.

10. In the course of the proceedings several judge rapporteurs dealt with the case.

11. In February 1995 the applicant sent a letter to the Minister of Justice asking that the proceedings be expedited. In a letter of 30 March 1995 the President of the Zamość Regional Court (*Sąd Wojewódzki*) informed the applicant that he would personally supervise the conduct of the proceedings. He also admitted that the proceedings had been slowed down as a result of changes of rapporteurs.

12. On 22 January 1996 the court obtained an expert report. On 17 April 1996 the court held a hearing. Two further expert reports were submitted to the court on 25 May 1995 and 16 June 1996, respectively.

13. The court held hearings on 26 January and 9, 16 and 23 February 1999. On 20 April, 12 May and 24 October 1999, respectively, the experts submitted supplementary reports.

14. On 4 February, 3 March and 17 March 2000 the court held hearings and heard evidence from several witnesses. On 4 April 2000 the court informed the parties that the final decision would be delivered on 18 April 2000.

15. On 18 April 2000 the court decided that it would not deliver the final decision and resumed the proceedings. On the same date the court asked the applicant to submit an extract from the land register confirming that her late parents had owned a certain plot of land. On 4 May 2000 the applicant made submissions to the court. She maintained that she was not able to produce the documents required by the court because her parents did not have title to that property.

16. On 15 May 2000 the court stayed the proceedings. It held that the applicant had failed to comply with the order of 18 April 2000. Subsequently, on 20 September 2001 the applicant asked the court to

resume the proceedings. On 23 January 2002 the Zamość Regional Court resumed the proceedings.

17. On 1 March 2002 the District Court held a hearing. On 15 March 2002 it gave a final decision. The applicant appealed. On 13 November and 4 December 2002 the Regional Court held hearings. On 14 December 2002 the Zamość Regional Court upheld the first-instance decision. It appears that this decision is final.

THE LAW

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

18. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention. That Article reads, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Period to be taken into consideration

19. The Court first observes that the proceedings began on 7 September 1985 when the applicant lodged her claim with the Zamość District Court. However, the period to be taken into consideration began on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. In the light of the material available to the Court at the date of the adoption of the present judgment, the proceedings ended on 14 December 2002. Their length has accordingly amounted to 9 years, 7 months and 2 weeks.

B. Admissibility

20. 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. It must therefore be declared admissible.

C. Merits

1. *The applicant's submissions*

21. The applicant submitted that the proceedings in her case had lasted more than 17 years. She further maintained that the overall length of the proceedings could not be justified by the significant complexity of the case.

22. She further claimed that she had not contributed to the length of the proceedings.

23. The applicant also criticised the conduct of the trial court which in her opinion had contributed to the prolongation of the proceedings. She emphasized that there had been several periods of inactivity i.e. from 16 January 1995 to 17 April 1996, from 17 April 1996 to 26 January 1999 and from 23 February 1999 to 4 February 2000. Lastly, she stated that the trial court failed to handle her case with due diligence.

2. *The Government's submissions*

24. The Government submitted the case was complex as it concerned the distribution of an estate between four siblings. They stressed that the courts needed to obtain several expert reports.

25. They were of the view that the applicant contributed to the conduct of the proceedings since she had submitted numerous motions to the trial court. She further on several occasions contested the expert reports.

26. As to the conduct of the relevant authorities the Government contended that the authorities had shown due diligence in the course of the proceedings.

27. In the conclusion the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

3. *The Court's assessment*

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

29. The Court considers that even though the case involved a certain degree of complexity on account of the need to obtain evidence it cannot be said that this in itself justified the overall length of the proceedings.

30. As regards the conduct of the applicant, the Court observes that it does not appear that she significantly contributed to the prolongation of the trial.

31. As to the conduct of the authorities the Court notes that there was a significant delay i.e. between 16 January 1995 and 22 January 1996, when the court remained entirely passive (see paragraphs 9 – 12 above). It further observes that there were two subsequent delays i.e. between 17 April 1996 and 26 January 1999 and also between 23 February 1999 and 4 February 2000, when no hearing was held.

32. Consequently, having regard to the circumstances of the case and taking into account the overall duration of the proceedings, the Court finds that the “reasonable time” requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

34. The applicant further complained that the length of the proceedings complained of had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

35. The Government contested that argument.

36. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

37. Having regard to its finding under Article 6 § 1 (see paragraph 33 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see the *Zanghi v. Italy* judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant sought an award of 300,000 Polish zlotys in respect of pecuniary damage. She further claimed the sum of 300,000 Polish zlotys for damage that she suffered as a result of the length of the proceedings.

40. The Government submitted that the applicant's claims were excessive.

41. As regards the pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making any award to her under that head (see, *mutatis mutandis Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

The Court considers that the applicant certainly suffered damage of non-pecuniary nature, such as distress and frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by finding a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a total sum of 6,000 euros ("EUR") under that head.

B. Costs and expenses

42. The applicant also claimed 12,547.05 Polish zlotys for the costs and expenses incurred before the domestic courts and the Court.

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

44. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. To be recoverable, the domestic costs and expenses must also be incurred to prevent or obtain redress for the violation found.

On the basis of the information in its possession, the Court finds no indication that in the present case any of the domestic costs and expenses claimed by the applicant were incurred by her for this purpose.

The Court notes that the applicant was not represented by a lawyer in the proceedings before it. Making its own assessment on an equitable basis, the Court awards the applicant EUR 40 for postage and copying expenses which she incurred in the context of filing and pursuing her application.

C. Default interest

45. 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* that there is no need to examine the complaint under Article 1 of Protocol No. 1;
4. *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 6,000 (six thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 40 (forty euros) in respect of costs and expenses;to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amounts; and
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President