



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

FOURTH SECTION

CASE OF JABLONSKÁ v. POLAND

(Application no. 60225/00)

JUDGMENT

STRASBOURG

9 March 2004

FINAL

09/06/2004

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

Having deliberated in private on 17 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 60225/00) 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 Slovak national, Mrs Mária Jablonská ("the applicant"), on 20 April 2000.

2. The applicant was not legally represented in the proceedings before the Court. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that her right to a "hearing within a reasonable time" had not been respected.

4. The application was initially allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 19 March 2002 the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, Mária Jablonská, is a Slovak national of Polish origin. She was born in 1921 in Warsaw and lives in Senec, Slovakia.

A. Background of the case

8. Before the Second World War the applicant's parents had title to a house in Warsaw. By virtue of an edict of 26 October 1945, all land in Warsaw was nationalised and they were allocated a flat in Warsaw. Later, they requested the administrative authorities to grant them a right of perpetual lease (*prawo wieczystej dzierżawy*) of their house. On 10 July 1951 the Warsaw National Council (*Rada Narodowa*) refused their request. After the death of the applicant's parents, she, being the sole heir to the property, sought restitution of, or compensation for, loss of property.

9. By a notarial deed of 4 December 1989 the Warsaw-Mokotów District Office (*Urząd Dzielnicowy*) granted a married couple, Mr S. and Mrs G.-S. the so-called "right of perpetual use" (*prawo użytkowania wieczystego*) of the property that had once belonged to the applicant's parents. Mr S. and Mrs G.-S. claimed to have been legal successors of the applicant's parents under a contract transferring title to the estate, a contract which had been allegedly concluded in 1967.

10. On 17 February 1992 the Warsaw Regional Prosecutor (*Prokurator Wojewódzki*) filed an action with the Warsaw Regional Court (*Sąd Wojewódzki*) against Mr S. and Mrs G.-S. and the Warsaw-Mokotów District Office, seeking to have the notarial deed of 4 December 1989 declared null and void.

11. By a notarial deed of 30 March 1992 Mr S. and Mrs G.-S. sold the property to a certain Ms J.P.

12. On 3 April 1992 the applicant filed an action with the Warsaw Regional Court against Mr S. and Mrs G.-S., seeking the annulment of the notarial deed of 4 December 1989.

13. On 23 June 1992 the court ordered that the action brought by the Regional Prosecutor and the one brought by the applicant be joined. On 7 May 1997 the proceedings were terminated by the judgment of the Warsaw Court of Appeal declaring the notarial deed of 4 December 1989 null and void.

B. Proceedings for the annulment of the notarial deed of 30 March 1992

1. Facts before 1 May 1993

14. On 5 November 1992 the applicant sued Ms J.P., Mr S. and Mrs G.-S. before the Warsaw Regional Court. She asked that the notarial deed of 30 March 1992 concluded between Ms J.P. and two other defendants be declared null and void (see paragraph 11 above).

15. On 13 November 1992 the court exempted the applicant from court fees.

16. On 18 November 1992 the court secured the applicant's claim and listed the first hearing for 18 January 1993.

2. Facts after 1 May 1993

17. On 13 May 1993 the Regional Court stayed the proceedings under Article 177 § 1 (1) of the Code of Civil Procedure. It considered that the determination of the case depended on the outcome of the proceedings brought against Mr S. and Mrs G.-S. (see paragraphs 10-13 above and paragraph 27 below).

18. On 19 September 1997 the applicant asked the trial court to resume the proceedings. On the same day she complained to the Minister of Justice about their excessive length.

19. The proceedings were resumed on 30 September 1997.

A hearing listed for 5 February 1998 was, however, adjourned, as the defendants were not present. The court ordered them to present a justification for their absence. A further hearing, which was to be held on 2 June 1998, was adjourned at the request of the applicant's lawyer. On the same day the court asked the Warsaw District Court to supply a file of a criminal case pending before that court and ordered the defendants to produce further documentary evidence.

20. On 30 July 1998 the applicant's counsel asked the court not to fix any hearings between 3 and 12 August 1998 and between 7 and 19 September 1998 because she would be on holiday on those dates.

21. On 25 November 1998 the court asked the Warsaw District Court to supply an extract from the mortgage register kept for the property in question.

22. Two further hearings listed, respectively, for 23 June 1999 and 27 March 2000 were adjourned; the first due to the defendants' absence, the second one at the defendants' request.

23. On 10 April 2000 the applicant again complained to the Minister of Justice about the delay in the proceedings. On 15 June 2000 the Minister acknowledged that the proceedings were indeed lengthy and apologised to the applicant. He also stated that all the measures so far taken to

counteract the unreasonable delay in the proceedings were ineffective and instructed the President of the Warsaw Court of Appeal to supervise the conduct of the trial.

24. On 12 July 2000 the Warsaw Regional Court held a hearing and heard evidence from the defendants. On 26 July 2000 it gave judgment declaring the contested notarial deed null and void. The defendants appealed. Subsequently, they asked the court to exempt them from court fees.

25. On 10 July 2001 the Warsaw Court of Appeal held a hearing. On 24 July 2001 it quashed the first-instance judgment and dismissed the applicant's claim.

26. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*) on 30 October 2001. The Prosecutor of Appeal (*Prokurator Apelacyjny*) filed a cassation appeal on her behalf on 31 October 2001. The appeals were dismissed on 23 October 2002.

II. RELEVANT DOMESTIC LAW

27. Under Article 173 et seq. of the Code of Civil Procedure the court may stay civil proceedings either *ex officio* or at a party's request.

Article 177 § 1 (1) provides:

“1. The court shall *ex officio* stay the proceedings:

(1) if the determination of the case depends on the outcome of other pending civil proceedings;”

THE LAW

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

28. The applicant complained that the length of the proceedings in her case had exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention. That provision, in its relevant part, reads:

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

29. The Government contested this.

A. Period to be taken into consideration

30. The proceedings began on 5 November 1992, when the applicant brought her action to the Warsaw Regional Court (see paragraph 14 above) but the period to be taken into consideration started on 1 May 1993, the date on which the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. The proceedings were terminated on 23 October 2002 (see paragraph 26 above). Their length accordingly amounts to nearly 10 years, of which 9 years, 5 months and 22 days fall within the Court's jurisdiction *ratione temporis*.

B. Reasonableness of the length of the proceedings

31. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, for instance, *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Complexity of the case

32. The applicant submitted that the case had been complex to some extent.

33. The Government, for their part, maintained that no complicated issues had not been involved in the determination of her claim.

34. The Court, noting that the object of the proceedings was the annulment of an ordinary contract for sale of property and that the determination of the claim did not involve the need to obtain any extensive evidence, considers that the case was not particularly complex.

2. Conduct of the applicant

(a) The parties' arguments

35. The applicant maintained that she had not contributed to the length of the proceedings and stressed that, despite her very old age and the fact that her every appearance before the Regional Court had involved a long and tiring travel, she had attended hearings and given evidence whenever necessary. She had not asked for any unjustified postponement and had never caused any undue delay.

36. The Government argued that the applicant had significantly contributed to the length of the proceedings. They submitted that the

applicant, when bringing her claim, had to be aware that its determination depended on the outcome of the earlier proceedings concerning the annulment of the notarial deed of 4 December 1989. Accordingly, the Regional Court could not be held responsible for the initial period of more than 4 years, during which the proceedings had been stayed.

37. The Government further pointed out that the applicant's lawyer had asked the court not to fix any hearings between 3 and 12 August 1998 and between 7 and 19 September 1998 and contended that the resultant inactivity should be attributed to the applicant. On the other hand, they acknowledged that the defendants' conduct had also caused delays in the proceedings.

(b) The Court's assessment

38. The Court is not persuaded by the Government's contention that the applicant caused significant delays in the proceedings. In that context, it notes that the stay of the proceedings did not, as the Government seem to have suggested, result from the dilatory conduct on her part. It originated in the Regional Court's decision and, however rational that decision might be, the ensuing delay cannot be attributed to the applicant. The same holds true in respect of the alleged hold-up caused by the fact that – on one occasion only – the applicant's lawyer asked the court not to set hearing dates during her holiday leave (see paragraph 22 above). Indeed, it does not appear that a one-month gap could have materially prolonged a trial that as a whole lasted nearly 10 years.

3. Conduct of the judicial authorities and what was at stake for the applicant

(a) The parties' arguments

39. The applicant stated that the courts had failed to handle her case with due diligence. In this regard, she referred to the fact that many hearings had been cancelled or adjourned and that there had been long intervals between the hearings.

Referring to what was at stake for her in the litigation, the applicant stressed that it had not only concerned her property rights but that it had also involved important emotional and personal matters relating to her determined, albeit futile, efforts to regain her family house that had been unjustifiably taken over by the communist authorities. Also, given her great age and bad health, as well as the considerable inconvenience of travelling at her age from her home in Senec, Slovakia to Warsaw to attend the hearings, the excessive length of the proceedings had put a severe emotional and physical strain on her.

40. The Government considered that the relevant courts had displayed due diligence in handling the applicant's case. The first-instance proceedings, after having been resumed on 30 September 1997, had been terminated within less than 4 years. It was true that the trial had been postponed several times because of the defendants' absence. Yet the Regional Court had made efforts to secure their presence before it. For instance, it had on one occasion ordered them to provide a justification for the absence. Furthermore, only delays attributable to the authorities might justify a finding that they were in breach of the "reasonable time" requirement. Since in the present case the parties' conduct was the main reason for the procrastination of the proceedings, the Polish State could not be held responsible for their length.

(b) The Court's assessment

41. The Court observes that even though the proceedings were stayed for about 4 years and 4 months (see paragraphs 18 and 19 above), this cannot justify the overall length of the time the relevant authorities needed to hear the case which was merely of average complexity.

42. While the respondent State cannot be held responsible for all delays in the proceedings, as, indeed, some hearings were adjourned due to the absence of the applicant's opponents, the Court finds no satisfactory explanation for the delay of about 1 year that occurred between 2 June 1998 and 23 June 1999 (see paragraphs 19-22 above). Nor does it see any reason why the appellate proceedings lasted 1 year and why the Supreme Court needed yet another year to hear the applicant's cassation appeal (see paragraphs 24-26).

Furthermore, in assessing the conduct of the relevant courts, the Court takes due account of the fact that already on 15 June 2000 the domestic authorities expressly acknowledged that the proceedings had indeed been lengthy and that all the steps taken to accelerate the trial had been to no avail (see paragraph 23 above).

43. Having regard to all the relevant circumstances and, more particularly, to the fact that in view of the applicant's old age – she was already 71 years old when the litigation started – the Polish courts should have displayed particular diligence in handling her case, the Court concludes that the "reasonable time" requirement was not satisfied.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant did not claim any pecuniary damage. However, under the head of non-pecuniary damage, she sought an award of 100,000 Polish zlotys (PLN) to compensate for moral damage suffered as a result of the protracted length of the proceedings.

46. The Government considered that the amount claimed was excessive.

47. The Court accepts that the applicant suffered non-pecuniary damage, such as distress and frustration, resulting from the undue prolongation of the proceedings that she brought to the Polish courts. Making its assessment on equitable basis, the Court awards the applicant EUR 6,000 under this head.

B. Costs and expenses

48. The applicant also claimed PLN 67,350 by way of legal costs and expenses incurred in the domestic court proceedings. In particular, she submitted details of travel expenses.

49. The Government submitted that the amount claimed was excessive.

50. The Court reiterates that to be entitled to an award of costs and expenses under Article 41, the injured party must have incurred them in order to seek, through the domestic legal order, prevention or redress of a violation, to have the same established by the Court or to obtain reparation therefore (see the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, p. 14, § 36). However, it considers that the applicant has not shown that the legal costs and expenses claimed by her were incurred in order to prompt domestic courts to comply with the requirements of Article 6 § 1 (see the *Zimmermann and Steiner v. Switzerland* cited above, pp. 14-15, § 37). The claim should accordingly be dismissed.

C. Default interest

51. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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, 6,000 EUR (six thousand euros) in respect of non-pecuniary damage, 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;
 - (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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President