



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

FOURTH SECTION

CASE OF JANIK v. POLAND

(Application no. 38564/97)

JUDGMENT

STRASBOURG

27 April 2004

FINAL

27/07/2004

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 Janik 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 23 March 2004,

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

PROCEDURE

1. The case originated in an application no. 38564/97 against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Barbara Janik ("the applicant"), on 30 May 1997.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Mr J. Wołosiewicz 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 transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was 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.

6. 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).

7. By a decision of 12 November 2002 the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, is a Polish national was born in 1947 and lives in Stalowa Wola, Poland. On 10 June 1991 the applicant and her husband obtained a divorce decree.

A. Proceedings concerning the division of the marital property

9. On 21 December 1993 the applicant filed an application with the Stalowa Wola District Court for the division of the marital property. She also asked the court to secure her claim.

10. On 10 January 1994 the applicant asked the court to exempt her from court fees. On 28 February 1994 the Stalowa Wola District Court exempted the applicant from the court fees and issued an interim order preventing her ex-husband from disposing of their marital property. On 29 June 1994, upon the defendant's appeal, the Tarnobrzeg Regional Court amended the interim order.

11. On 6 September 1994 the Stalowa Wola District Court decided to join the present proceedings with the action concerning the annulment of contracts (see B below). During a hearing held on 14 October 1994 the District Court reversed its previous decision and decided to deal with the proceedings separately.

12. On 12 April 1995 the court rejected the applicant's appeal against the order of 6 September 1994 as it had been lodged outside the prescribed time-limit. On 26 July 1995, on the applicant's request, the District Court granted her leave to file an appeal out of time. On 5 October 1995 the Tarnobrzeg Regional Court dismissed that appeal.

13. On 11 March 1996 the Stalowa Wola District Court stayed the proceedings. It considered that their result depended on the outcome of the proceedings relating to the annulment of contracts (see B below). On 23 April 1996 the Tarnobrzeg Regional Court quashed this decision and remitted the case for further examination.

14. The District Court held hearings on 1 August and 23 August 1996. On 15 January 1997 the District Court ordered that expert evidence from a company "TC" be obtained.

15. Subsequently, the applicant on three occasions lodged unsuccessful applications for her claim to be secured.

16. On 3 April and 8 April 1997 the trial court held hearings.

17. On 23 June 1997 the applicant challenged the impartiality of the judges of the Stalowa District Court. The Regional Court dismissed her challenge on 22 July 1997.

18. On 6 May, 18 August and 8 October 1997 the trial court repeatedly invited the expert “TC” company to submit their report. The court held further hearings on 18 June and 23 October 1998.

19. On 6 November 1998 the District Court delivered a preliminary ruling and gave an itemised breakdown of the marital property. This decision was upheld by the Tarnobrzeg Regional Court on 4 March 1999. The applicant's further cassation appeal was rejected on 16 October 1999 as it had been lodged outside the prescribed time limit.

20. The trial court held a hearing on 10 December 1998.

21. On 25 April 2001 the applicant asked the trial court to give a partial judgment in the case. On 10 May 2001 the court dismissed her request.

22. On 11 May 2001 the trial court again requested the “TC” company to prepare an opinion.

23. It appears that the proceedings are pending before the Stalowa Wola District Court.

B. Proceedings concerning the applicant's claim for the annulment of contracts

24. On 15 November 1993 the applicant requested the Stalowa Wola District Court to declare a contract concluded by her ex-husband null and void.

25. The court held a hearing on 23 February 1993.

26. At the hearing held on 16 March 1994 the court stayed the proceedings. It considered that the determination of the claim depended on the outcome of the proceedings concerning the division of the marital property. On 19 August 1994, upon the applicant's appeal, the Tarnobrzeg Regional Court quashed this decision.

27. On 6 September 1994 the Stalowa Wola District Court decided to join these two cases. However, on 14 October 1994 it reversed its previous decision and decided to deal with them separately.

28. Two years later, on 23 August 1996, the District Court fixed a hearing for 26 September 1996. This hearing was cancelled as the applicant had challenged the impartiality of the presiding judge. On 27 September 1996 the District Court rejected the applicant's challenge. This decision was upheld by the Regional Court on 14 November 1996.

29. On 28 August 1996 the applicant modified her claim. On 12 December 1996 the District Court dismissed the modified claim as the applicant had not specified its value. On 7 February 1997 the court dismissed her appeal.

30. On 7 March 1997 the District Court dismissed the applicant's request for an interim court fee and her further request for an interim order. The applicant appealed. On 28 January 1998 the Regional Court quashed the decision of 7 March 1997.

31. The next hearing was held on 4 November 1997.

32. On 25 February 1998 the District Court referred the case to the Tarnobrzeg Regional Court on grounds of the increased value of the claim. On 22 September 1998 the Regional Court held a hearing. On 2 October 1998 it ordered that part of the applicant's claims be dealt with by the District Court. On 18 December 1998 the Rzeszów Court of Appeal quashed this decision and remitted the case to the Regional Court.

33. On 5 March 1999 the Regional Court held a hearing. It ordered the applicant to specify the names of all participants in the proceedings and adjourned the hearing.

34. On 7 April 1999 the Regional Court gave judgment and dismissed the applicant's claims. On 24 May 1999 the Regional Court rejected her appeal against this decision as she had failed to comply with certain formal requirements. The Rzeszów Court of Appeal upheld this decision on 25 June 1999.

35. The applicant subsequently lodged several unsuccessful requests for the proceedings to be reopened.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

36. The applicant complained that the length of both sets of proceedings in her case exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention, which 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. “

37. The Government contested this view.

38. The Court reiterates that the reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference 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 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, 15 October 1999, § 60).

A. Proceedings concerning division of marital property

1. The parties' submissions

39. The applicant submitted that the proceedings had lasted excessively long. She further claimed that her case had not been complex. Lastly, she stressed that the expert opinion ordered in January 1997 had not yet been submitted to the trial court.

40. The Government submitted that the case had been particularly complex. They stressed that the determination of the value of the applicant's marital estate had been very difficult. They further argued that the applicant had contributed to the length of the proceedings by submitting numerous pleadings and procedural appeals to the trial court. As to the conduct of the relevant authorities the Government contended that the authorities had shown due diligence. In the conclusion the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

2. The Court's assessment

41. The proceedings began on 21 December 1993, when the applicant lodged her application with the Stalowa Wola District Court. In the light of the material available to the Court at the date of the adoption of the present judgment, the proceedings have not yet ended. Their length has accordingly amounted to more than 10 years and 3 months.

42. 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.

43. As regards the conduct of the applicant the Court observes that it does not appear that the way she exercised her procedural rights significantly contributed to the length of the proceedings.

44. While assessing the conduct of the national authorities, the Court notes, that there were delays in the process of obtaining expert evidence. In particular, it appears that the expert opinion requested in 1997 has not to date been submitted to the trial court (see paragraphs 14, 18, 22 above).

45. Consequently, having regard to 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.

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

B. Proceedings concerning annulment of the contract

1. The parties' submissions

47. The applicant submitted that the proceedings had lasted excessively long. She further claimed that the case had been a simple one. Lastly, she alleged there had been a violation of Article 6 § 1 of the Convention.

48. The Government agreed that the case had not been complex. They maintained however, that the applicant had significantly contributed to the length of the proceedings. Lastly, they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

2. The Court's assessment

49. The proceedings began on 15 November 1993, when the applicant lodged her claim with the Stalowa Wola District Court and ended on 7 April 1999. They had thus lasted nearly 5 years and 5 months.

50. The Court notes that the parties agreed that the case was not particularly complex (see paragraphs 47 and 48 above). It does not see any reason to hold otherwise.

51. The Court further considers that it is true that the applicant modified her claim and challenged the impartiality of the presiding judge. However, it does not appear that those events significantly prolonged the trial.

52. Lastly, as regards the conduct of the national authorities the Court notes that the case lay dormant for a substantial period of two years i.e. between 14 October 1994 to 23 August 1996.

53. Assessing all relevant facts as a whole, 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant sought an award of 428,000 PLN by way of compensation for both pecuniary and a non-pecuniary damage which she had suffered as a result of the protracted length of both sets of the proceedings.

57. The Government submitted that the applicant's claim was exorbitant and asked the Court to rule that the finding of a violation would constitute just satisfaction.

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

59. The Court considers that the applicant certainly suffered damage of a 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 8,000 euros (EUR) under that head.

B. Costs and expenses

60. The applicant did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

C. Default interest

61. 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, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

to be converted into Polish zlotys at a rate applicable at the date of the settlement

(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 27 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President