



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

FOURTH SECTION

CASE OF DOMAŃSKA v. POLAND

(Application no. 74073/01)

JUDGMENT

STRASBOURG

25 May 2004

FINAL

25/08/2004

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 Domańska 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 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 4 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 74073/01) 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 Krystyna Domańska ("the applicant"), on 18 May 2000.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki, and subsequently, Mr J. Wołasiewicz of the Ministry of Foreign Affairs.

3. On 10 March 2003 the President of the Fourth Section 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 was decided to examine the merits of the application at the same time as its admissibility. The President of the Chamber further gave priority of the application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

4. The applicant was born in 1929 and lives in Jarosław, Poland.

5. On 4 November 1994 the applicant lodged with the Jarosław District Court (*Sąd Rejonowy*) a civil action against the Jarosław City Council (*Gmina Miejska*) in which she requested the court to amend the land register. She further applied for exemption from the court fees.

6. On 21 November 1994 the case was transferred to the Przemyśl Regional Court (*Sąd Wojewódzki*).

7. On the same day, upon the court's request, the applicant specified her claim.

8. On 30 January 1995 the court partly exempted the applicant from the court fees.

9. In April 1995 the court again ordered the applicant to specify her claim.

10. On 24 April 1995 the Regional Court held the first hearing.

11. Subsequently, the hearings were held on 20 June and 3 October 1995. At the latter hearing the court ordered an expert opinion.

12. On 16 April 1996 an expert submitted his opinion to the court.

13. On 27 August 1996 the court held a hearing at which it ordered a second expert opinion. The opinion was submitted to the court in January 1997.

14. The next hearings were held on 31 January, 25 February, 18 March, 18 April and 30 May 1997.

15. On 6 June 1997 the Przemyśl Regional Court gave judgment in which it dismissed the applicant's claim.

16. On 4 August 1997 the applicant lodged an appeal against this judgment.

17. On 7 October 1997 the applicant was partly exempted from the court fees in the appellate proceedings.

18. On 8 October 1998 the Rzeszów Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's appeal.

19. On 9 November 1998 the applicant lodged a cassation appeal. On 20 November 1998 the Rzeszów Court of Appeal exempted the applicant from the fees for lodging the cassation appeal.

20. On 25 May 2001 the Supreme Court (*Sąd Najwyższy*) refused to entertain the cassation appeal as it was manifestly ill-founded and raised no serious legal issues.

THE LAW

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

21. 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, 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..."

22. The Government contested that argument.

23. The period to be taken into consideration began on 4 November 1994 and ended on 25 May 2001 (see paragraphs 5 and 20 above). It thus lasted six years, six months and twenty-one days.

A. Admissibility

24. The Court notes that the application 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.

B. Merits

1. The submissions before the Court

25. The Government acknowledged that the case was not a complex one and that the applicant had not significantly contributed to the length of the proceedings. However, they noted that the applicant had asked to be exempted from the court fees and had been twice ordered by the court to specify her claim.

26. The Government further submitted that the domestic courts acted diligently and had ordered two expert opinions.

27. In the Government's opinion what was at stake for the applicant was solely of a pecuniary nature.

28. The applicant stated that she was unable to comment on the Government's submissions because they were written in English. She submitted that she did not understand this language.

29. The applicant maintained that the domestic proceedings concerned her property rights and therefore they were of significant importance for her. Moreover, she submitted that given her great age, the protracted length of the proceedings caused her particular hardship.

2. The Court's assessment

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

31. The Court observes that the Government acknowledged that the case was a simple one and that the applicant had not significantly contributed to the length of the proceedings. It sees no reason to hold otherwise.

32. With respect to the conduct of the domestic authorities, the Court notes that no hearings were held between 4 October 1995 and 26 August 1996 as well as between 28 August 1996 and 31 January 1997 (see paragraphs 11, 13 and 14 above). However, as transpires from the file, during these periods the domestic court took some action and waited for expert opinions to be prepared. While the Court notes that the expert's work in the context of judicial proceedings was supervised by a judge, who remained responsible for the preparation and speedy conduct of proceedings (see, the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44), it does not find that the delays in question were unreasonably long. The overall unacceptable length of the proceedings resulted rather from the conduct of the Court of Appeal and the Supreme Court, which had been examining the applicant's appeal and cassation appeal for fourteen and thirty months respectively. The Court agrees that some delays in the procedure before the Supreme Court could be explained by the fact that, during the material time the Supreme Court had to deal with an increased workload and that subsequently the authorities had taken remedial actions (see, *Kepa v. Poland* (dec), no. 43978/98, 30 September 2003). Nevertheless, in the present case, the applicant's cassation appeal lay dormant in the Supreme Court for thirty months which constitutes an unreasonable delay.

33. The Court is of the view that what was at stake for the applicant in the domestic litigation was of some importance for her.

34. The Court considers that, in the particular circumstances of the instant case, a period of six years, six months and twenty-one 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

35. 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

36. The applicant claimed 30,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

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

38. 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 1,800 euros (EUR) under the head of non-pecuniary damage.

B. Default interest

39. 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

1. *Declares* the application admissible unanimously;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by 5 votes to 2
 - (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 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the 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;
4. *Dismisses* by 5 votes to 2 the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, a joint declaration by Judges Strážnická and Casadevall is annexed to this judgment:

N.B.
M.O.B.

JOINT DECLARATION BY JUDGES STRÁŽNICKÁ
AND CASADEVALL

We voted for a violation of Article 6 § 1 of the Convention. On the other hand, we are unable to agree with the ruling on just satisfaction. Taking into account the jurisprudence of the Court concerning the length of civil proceedings, the age of the applicant, and the Court's findings in paragraph 33 of the present judgment we consider that the amount awarded is too low.