



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

FOURTH SECTION

CASE OF LISLAWSKA v. POLAND

(Application no. 37761/97)

JUDGMENT

STRASBOURG

13 July 2004

FINAL

15/12/2004

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 Lisławska v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mr S. PAVLOVSCHI,

Mrs E. FURA-SANDSTRÖM, *judges*,

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

Having deliberated in private on 22 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 37761/97) 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, Elzbieta Lisławska ("the applicant"), on 25 November 1996.

2. The applicant was represented by Mr. Piątkowski, a lawyer practising in Opole. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and Mr J. Wołasiewicz from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the length of civil proceedings in her case had exceeded a reasonable time.

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 4 June 2001 the applicant filed an additional complaint under Article 13 of the Convention about lack of effective remedy in respect of the excessive length of the proceedings.

7. 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).

8. By a decision of 26 November 2003 the Court declared the application admissible.

9. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1926 and lives in Gliwice, Poland.

A. Proceedings concerning the action for damages

11. On 18 September 1985 the applicant sued the “Domek” building co-operative (*Spółdzielcze Zrzeszenie Budowy Domków Jednorodzinnych “Domek”*) in the Kraków Regional Court (*Sąd Wojewódzki*), seeking damages for the incomplete and defective construction of her house.

12. Before 1 May 1993 the Court held eight hearings and obtained several expert opinions.

13. On 3 June, 27 September and 25 November 1993 the Regional Court held hearings.

14. On 25 January 1994 the trial court stayed the proceedings, finding that the applicant had not specified her claim. On 17 February 1995 the court resumed the proceedings. The court held further hearings on 10 April and 30 October 1995.

15. On 10 October 1996 the applicant challenged the impartiality of the presiding judge. On 7 November 1996 the Kraków Regional Court dismissed her challenge. On 9 May 1997 the Kraków Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant’s further appeal.

16. At the hearing held on 18 September 1997 the court heard evidence from an expert. Further hearings were held on 2 October and 24 November 1997.

17. On 8 December 1997 the Kraków Regional Court gave judgment and dismissed the applicant’s claim. On 9 February 1998 the applicant lodged an appeal against this decision.

18. On 9 October and 8 December 1998 the Kraków Court of Appeal held hearings. On 18 December 1998 the Kraków Court of Appeal upheld the first-instance judgment.

19. On 12 March 1999 the applicant lodged a cassation appeal with the Supreme Court. The proceedings were terminated by a decision of the Supreme Court of 26 October 2001.

B. Proceedings concerning the annulment of a resolution

20. On 9 May 1990 the applicant sued the “Domek” building co-operative in the Kraków District Court (*Sąd Rejonowy*) seeking annulment of a resolution divesting her of membership in the co-operative.

21. The court held hearings on 19 June and 18 September 1990. On 26 November 1990 the trial court stayed the proceedings as it considered that their determination depended on the outcome of the proceedings concerning the action for damages (described above). On 20 March 1991 the Kraków Regional Court dismissed the applicant’s appeal against this decision.

22. On 27 June 1993 the applicant asked the President of the Kraków Regional Court to resume the proceedings. On 6 July 1993 the President replied that he was not competent to make procedural decisions in the proceedings.

23. On 28 December 1993 the applicant asked the Kraków District Court to resume the proceedings. On 30 December 1993 the court refused her request, referring to the reasons given in the decision of 26 November 1990. On 31 May 1994 the Kraków Regional Court dismissed the applicant’s further appeal.

24. On 18 June 1997 the District Court discontinued the proceedings finding that they had been stayed for over three years and that the parties had not requested that they be resumed. On 1 July 1997 the applicant appealed against this decision. On 8 October 1997 the Regional Court quashed it.

25. On 5 June 1998 the applicant again asked the trial court to resume the proceedings. On 16 June 1998 the Kraków District Court refused her request.

26. On 15 October 2002 the District Court resumed the proceedings. On 30 January 2003 the court gave judgment and dismissed the applicant’s claim. On 12 March 2003 the applicant lodged an appeal with the Regional Court.

27. It appears that they are still pending.

THE LAW

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

28. 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.”

29. The Government contested that view.

30. 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).

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*, §§ 58-59, cited above).

A. Proceedings concerning the action for damages

1. *The parties’ submissions*

31. The Government alleged that the proceedings had been complex as the trial court needed to obtain three expert reports. They further claimed that the authorities had shown due diligence in the case. They were of the opinion that the applicant had contributed to the length of the proceedings as she had requested to the court to obtain evidence from three experts and she had not been interested in a friendly settlement of the case. She had further on one occasion challenged the presiding judge.

32. The applicant argued in reply that her case had not involved factual and legal complexity. She had further stressed that the manner in which she had exercised her procedural rights had not substantially delayed the proceedings.

2. *The Court's assessment*

33. The proceedings began on 18 September 1985 when the applicant lodged her claim with the Kraków Regional Court and ended on 26 October 2001. Their length has accordingly amounted to more than 16 years and 5 weeks, of which the period of over 8 years 6 months falls within the Court's jurisdiction *ratione temporis*.

34. The Court observes the case had involved a certain degree of complexity on account of the need to obtain expert evidence. It further notes that the applicant had challenged the impartiality of the presiding judge on one occasion. However, these factors alone cannot account for the overall duration of the proceedings.

35. With respect to the conduct of the national authorities the Court, considers that there had been long intervals between hearings. Moreover, on 1 May 1993 the case had been already pending before the first-instance court for nearly eight years.

36. 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.

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

B. Proceedings concerning the annulment of a resolution

1. *The parties' submissions*

38. The Government submitted that the outcome of these proceedings depended on the outcome of the proceedings described above and therefore they should not be assessed separately.

39. In reply, the applicant stressed that despite her several motions for the proceedings to be resumed they remained stayed for 12 years. She further asked the Court to find a violation.

2. *The Court's assessment*

40. The proceedings began on 9 May 1990 when the applicant lodged her claim with the Kraków Regional Court. In the light of the material available to the Court at the date of the adoption of the present judgment, it appears that the proceedings are still pending. Their length has accordingly amounted to more than 14 years, of which period of over 11 years falls within the Court's jurisdiction *ratione temporis*.

41. The Court considers that even though the case involved a certain degree of complexity, it cannot be said that this in itself justified the length of the proceedings.

42. 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.

43. As regards the conduct of the authorities, the Court considers that the Government's observations do not explain the delays in the proceedings.

44. Assessing all relevant facts as a whole 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant further complained that she had not had a domestic remedy to complain about the excessive length of the proceedings. She relied on Article 13 of the Convention.

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

47. The Government agreed that at the time of lodging her application with the Court the applicant had not had at her disposal an effective remedy for her complaint under Article 6 § 1 of the Convention. However, they noted that on 4 December 2001 the Polish Constitutional Court gave judgment, in consequence of which a remedy in respect of the excessive length of proceedings had been created. In particular, the applicant could have lodged a civil action against the State Treasury under Article 417 of the Civil Code, claiming damage caused by the unreasonable length of the proceedings. Lastly, they claimed that after 18 December 2001 the applicant had at her disposal an effective remedy and "encouraged" her to resort to that remedy. In conclusion, the Government invited the Court to find that there had been no violation of Article 13 of the Convention.

48 The applicant generally disagreed with the Government's observations.

49. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. Furthermore, the Court refers to its case-law to the effect that no specific remedy in respect of the excessive length of proceedings exists under Polish law (see, *D.M. v. Poland*, no.13557/02, §§ 47-50, 14 October 2003, *Kudla v. Poland* [GC], no. 30210/96, § 160, ECHR 2000-XI)

50. The Court notes that the Government acknowledged that at the time of lodging her application with the Court the applicant did not have an effective remedy in respect of the length complaint.

51. The Court further observes that the Government have failed to substantiate their contention that the remedy at issue is an effective one. In particular they have failed to provide any further information about the Constitutional Court's judgment or about juridical practice relating thereto. In the absence of such evidence the Court finds that the Government have failed to substantiate their contention that the remedy at issue is an effective one (see, the *D.M.* and *Kudła* judgments cited above).

52. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby she could enforce her right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant sought an award of 72,812 euros in respect of pecuniary damage. That amount corresponded to the applicant's principal claim in the domestic proceedings. She further claimed the sum of 100,000 euros for non-pecuniary damage she had suffered as a result of the protracted length of the proceedings.

55. The Government submitted that the applicant's claims were excessive and that there had been no causal link between the length of the proceedings and the amount claimed.

56. 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* § 164 cited above).

57. 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 EUR 10,000 (ten thousand euros) under that head.

B. Costs and expenses

58. The applicant also claimed 1,101 euros and 7,150,000 old Polish zlotys for the costs and expenses incurred before the domestic courts (lawyer's fees, fees for experts etc).

59. The Government invited the Court to make an award, if any, only in so far as the costs and expenses were actually and necessarily incurred in the preparation of the applicant's case before the Court and were reasonable as to quantum. They relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 14, § 36).

60. According to the Court's case-law, an applicant is entitled to reimbursement of the costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings.

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* that there has been a violation of Article 13 of the Convention;
3. *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 10,000 (ten thousand euros) in respect of non-pecuniary damage, 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 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* the remainder of the applicant's claim for just satisfaction.

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

Michael O'BOYLE
Registrar

Nicolas BRATZA
President