



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

FOURTH SECTION

CASE OF L. v. POLAND

(Application no. 44189/98)

JUDGMENT

STRASBOURG

27 July 2004

FINAL

27/10/2004

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 Ł. 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,

Mrs E. FURA-SANDSTRÖM,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 6 July 2004,

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

PROCEDURE

1. The case originated in an application (no. 44189/98) 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 Polish nationals, M.Ł.(the first applicant) and A.Ł.(the second applicant), on 18 November 1997. The President of the Chamber acceded to the applicants' request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

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

3. On 5 May 2003 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of two sets 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 applicants M.Ł and A.Ł were born in 1952 and 1975 respectively. They both live in Warsaw, Poland.

1. Proceedings concerning a claim for maintenance

5. On 2 December 1994 the first applicant lodged a claim for maintenance against her ex-husband (“J.Ł”) with the Warsaw District Court (*Sąd Rejonowy*).

6. On 22 February 1995 the court held a hearing and ordered an expert opinion. It was submitted to the court on 1 April 1995.

7. At a hearing held on 9 June 1995 the trial court refused to issue an interim measure in order to secure the claim. The first applicant appealed. On 3 August 1995 the Warsaw Regional Court (*Sąd Okręgowy*) dismissed the appeal. Further hearings were held on 16 January, 16 September and 1 October 1996.

8. On 10 October 1996 the District Court gave judgment. On 7 November 1996 the first applicant filed an appeal. On 25 March, 20 May and 29 September 1997 the Warsaw Regional Court held hearings. On 13 October 1997 it gave judgment and dismissed the appeal. On 5 January 1998 the first applicant lodged a cassation appeal.

9. On 7 October 1999 the Supreme Court (*Sąd Najwyższy*) gave judgment and remitted the case to the Regional Court. On 22 December 1999 the Regional Court remitted the case to the District Court. On 8 May 2000 the first applicant modified her claim. On 10 May 2000 the District Court held a hearing in the applicant’s case.

10. On 8 June 2000 the District Court refused to issue an interim measure in order to secure the claim. The applicant appealed. On 20 September 2000 the Regional Court dismissed the applicant’s appeal. Subsequent hearings were held on 9 January and 22 February 2001.

11. On 22 January 2001 the President of the Warsaw District Court informed the applicant that he would supervise the case in order to expedite the proceedings. On 29 March 2001 the trial court held a hearing and ordered a joint opinion from three experts. On 10 May 2001 the court changed its previous order and decided that three expert opinions be obtained.

12. On 8 July 2001 the first applicant complained to the President of the Warsaw Regional Court about the delay in the proceedings. On 27 July 2001, in reply to her complaints, the President observed that the proceedings were conducted without any delay.

13. On 7 August 2001 the first applicant challenged an expert opinion. She further requested the court to exclude a certain expert from giving an opinion in her case. On 10 August 2001 the trial court dismissed her

request. On 28 August 2001 the first applicant appealed against the decision. On the same date she challenged the impartiality of the presiding judge and requested his withdrawal from sitting in the case. On 7 September 2001 the District Court dismissed her request. The first applicant appealed.

14. Subsequent hearing was held on 7 November 2002. On 15 April 2003 the Warsaw District Court gave judgment. The judgment is final.

2. Proceedings concerning a claim for annulment of a sale contract

15. On 11 May 1993 the applicants lodged a claim with the Warsaw Regional Court, seeking annulment of a contract of sale of real estate.

16. On 1 June 1993 the court exempted the applicants from court fees. On 26 January 1994 the court fixed the date of a first hearing for 9 March. The trial court held hearings on the following dates: 9 March 1994; 2 June 1995; 22 August and 24 October 1997; 29 March, 22 June, 10 October and 26 November 1999.

17. On 10 December 1999 the Regional Court gave judgment and dismissed the claim. The applicants appealed.

18. On 21 June 2000 the Warsaw Court of Appeal (*Sąd Apelacyjny*) gave judgment. The applicants lodged a cassation appeal. On 11 July 2002 the Supreme Court dismissed the appeal.

3. Proceedings concerning a claim for child maintenance

19. On 16 September 1996 the second applicant lodged a claim with the Warsaw District Court, seeking a higher amount of child maintenance. On 13 November 1996 the first applicant lodged a similar claim acting on behalf of her second daughter – “MA.Ł”. On 9 June 1997 the trial court joined the proceedings. On 27 June 1997 the court gave judgment. The applicants appealed. On 1 April 1998 the Warsaw District Court dismissed the applicants’ appeal and the judgment became final.

4. Proceedings concerning an application to remove the first applicant’s husband of his parental rights over the minor daughter

20. On 7 November 1994 the first applicant lodged a claim against her ex-husband - J.Ł. with the Warsaw District Court, seeking a removal of his parental rights over MA.Ł. On 6 February 1994 the first applicant modified her claim. On 3 March 1995 the ex-husband lodged a counter claim (*wniosek wzajemny*). On 7 November 1996 and 4 April 1997 respectively, the first applicant again modified her claim.

21. In the meantime, the trial court had obtained a number of expert opinions concerning MA.Ł.’s state of health. On 25 May 1997 the court

dismissed the first applicant's claim. On 16 June 1997 the first applicant appealed. On 21 January 1998 the Warsaw Regional Court dismissed the appeal. On 22 July 1998 the applicant lodged a cassation appeal against the judgment. On 25 May 1999 the Supreme Court dismissed the cassation appeal.

5. Criminal proceedings against the applicant's ex-husband

22. On 14 December 1993 a bill of indictment was lodged with the Warsaw District Court against J.Ł. He was charged with uttering threats and failure to pay child maintenance. On 14 March 1994 the court allowed the first applicant to take part in the proceedings as an auxiliary prosecutor (*oskarżyciel posiłkowy*). On 2 December 2002 the Warsaw District Court convicted J.Ł as charged. On 30 October 2003 the Warsaw Regional Court quashed the first-instance judgment and remitted the case. The proceedings are pending before the Regional Court.

THE LAW

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

A. The complaint about the length of the first set of proceedings

23. The first applicant complained that the length of the 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..."

She further alleged violation of Articles 2, 3, 8 and 14 of the Convention.

24. The Government contested that argument.

25. The period to be taken into consideration began on 2 December 1994 and ended on 15 April 2003. It thus lasted 8 years, 4 months and 2 weeks.

1. Admissibility

26. The Court notes that the complaint under Article 6 § 1 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.

27. The Court further considers, that the facts of the case do not disclose any appearance of a violation of the Articles 2, 3, 8 and 14. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

2. Merits

28. The Government maintained that the proceedings had been complex. In particular they stressed that the trial court had to obtain several expert opinions. They were of the opinion that the applicant had contributed to the prolongation of the proceedings by submitting numerous motions and pleadings to the trial court. She also on two occasions challenged the impartiality of the presiding judges. They were further of the opinion that the domestic authorities had diligently dealt with the case. In conclusion, the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

29. The first applicant generally disagreed with the Government's observations. Referring to what was at stake for her in the litigation, she stressed that it had concerned maintenance for herself and her disabled daughter. Also given the first applicant's bad health the excessive length of the proceedings had put a severe emotional and physical strain on her.

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 applicants and of the relevant authorities and what was at stake for the applicants 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 unreported).

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

32. As to the conduct of the first applicant the Court observes that it is true that she had challenged the impartiality of the presiding judge and submitted several motions to the trial court, however it does not appear that these events had significantly prolonged the trial.

33. The Court notes that the applicant's action concerned maintenance for her minor daughter. Therefore, the Court agrees that what was at stake in the proceedings at issue was undoubtedly of significant importance to the

first applicant and required that the domestic courts show diligence and expedition in handling her case.

34. Assessing all relevant facts as a whole and having regard to the overall duration of the proceedings and in particular what was at stake for the applicant, 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.

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

B. The complaint about the length of the second set of proceedings

36. Both applicants 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...”

37. The Government contested that argument.

38. The period to be taken into consideration began on 11 May 1993 when the applicants lodged their claim with the Warsaw Regional Court and ended on 11 July 2002. It thus lasted 9 years and 2 months.

1. Admissibility

39. 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.

2. Merits

40. The Government submitted that the case had not been very complex. They stressed that the authorities had shown due diligence in the proceedings. They were further of the opinion that the applicants had not 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.

41. The applicants generally disagreed with the Government. They further submitted that the proceedings had lasted excessively long.

42. 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 applicants and of the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* and *Humen v. Poland* cited above).

43. As regards the conduct of the applicant, the Court observes that the Government acknowledged that the applicant had not in any way contributed to the length of the proceedings (see paragraph 40 above).

44. As to the conduct of the national authorities the Court notes that there were periods of inactivity during the proceedings. In particular between 9 March 1994 and 26 November 1999 the trial court held only eight hearings with significant intervals between them. There was a significant delay of more than two years from 2 June 1995 to 22 August 1997 and then another delay from 24 October 1997 to 29 March 1999. The Court also considers that the Government's observations do not explain these delays.

45. 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.

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

C. The complaint about the length and fairness of the third and fourth set of proceedings

47. Both applicants complained about the length and fairness of the third and fourth set of proceedings. They invoked Articles 2, 3, 6 § 1, 8 § 1 and Article 2 of Protocol No 1.

1. Admissibility

48. The Court finds that the facts of the case do not disclose any appearance of a violation of the above mentioned provisions. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4

D. The complaint about the length of the fifth set of proceedings

49. The applicants complained under Article 5 of the Convention about the length of criminal proceedings against "J.L.". The Court considers that this complaint should be examined under Article 6 § 1 of the Convention.

1. Admissibility

50. The Court reiterates that the Convention does not guarantee a right to have criminal proceedings instituted against third persons or to have such persons convicted (see *R.D. v. Poland*, nos. 29692/96 and 34612/97, Commission decision of 22 October 1997, unpublished). Moreover, the

guarantees set out in Article 6 § 1 do not apply to a victim who has failed to prove that any of her civil rights have been involved in those proceedings.

51. It follows that this part of the application is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicants originally asked for EUR 370,000 for non-pecuniary damage that they suffered as a result of the protracted length of the proceedings. Subsequently, they modified their claim. Eventually, the first applicant sought an award of EUR 1,627,834 in respect of pecuniary damage. That amount corresponded to the applicant’s principal claims in domestic proceedings. She further claimed the sum of EUR 50,000 for non-pecuniary damage that she had suffered as a result of the protracted length of the proceedings. The second applicant asked the Court to award her EUR 30,434 in respect of pecuniary damage and EUR 25,000 under the head of non-pecuniary damage.

54. The Government submitted that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention. They further argued that the applicants’ claims were exorbitant and asked the Court to rule that the finding of a violation would constitute just satisfaction.

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

56. The Court further considers that the applicants certainly suffered non-pecuniary damage, such as distress and frustration on account of the protracted length of two sets of 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 first applicant a total sum of EUR 4,800 and the second applicant EUR 1,800 EUR under that head.

B. Costs and expenses

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

C. Default interest

58. 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* admissible the complaints under Article 6 § 1 relating to the excessive length of the proceedings instituted on 2 December 1994 before the Warsaw District Court, and the proceedings instituted on 11 May 1993 before the Warsaw Regional Court;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,800 (four thousand eight hundred 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 the respondent State is to pay the second 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, plus any tax that may be chargeable, to be converted into Polish zlotys at a rate applicable at the date of the settlement;
 - (c) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President