



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

FOURTH SECTION

CASE OF ROMANOW v. POLAND

(Application no. 45299/99)

JUDGMENT

STRASBOURG

21 September 2004

FINAL

21/12/2004

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

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
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 31 August 2004,

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

PROCEDURE

1. The case originated in an application (no. 45299/99) 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, Lidia Barańska ("the applicant"), on 17 February 1998. Later on, the applicant changed her name into Romonow.

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

3. The applicant alleged that her case had not been heard within a reasonable time in breach of Article 6 § 1 of the Convention.

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

8. By a decision of 3 June 2003 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1962 and lives in Poznań.

10. In March 1988 the applicant got divorced. She has two children, who were at that time about two years old and four years old respectively.

11. On 22 May 1988 she filed with the Poznań District Court (*Sąd Rejonowy*) a petition in which she sought the division of the shared property of her and her former husband.

12. The court held hearings on 29 September and 11 November 1988, 4 April and 30 May 1989, 24 March, 24 May, 28 August and 25 October 1990, 4 February, 24 August and 18 November 1992, 27 January, 12 May and 19 August 1993, 9 November 1994, 11 January, 22 February, 26 April, 21 June and 25 August 1995, 9 February, 3 July, 16 October and 15 November 1996, 23 May and 31 December 1997, as well as 16 January 1998.

13. The court ordered 6 expert opinions concerning the value of the disputed property, out of which 3 had been prepared with a delay of five months.

14. On 16 January 1998 the court gave judgment. It granted the applicant, *inter alia*, the right to the flat in a housing co-operative and several objects located there. Her husband was granted, *inter alia*, a car and he was supposed to pay a certain sum to the applicant. The court pointed out that the parties to the proceedings had contested each other's statements with respect to most of the objects and on a few occasions had changed their own statements.

THE LAW

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

15. The applicant complained that the proceedings in his case had exceeded a reasonable time, within the meaning of Article 6 § 1 of the Convention, which provides, 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...”

A. Parties' submissions

16. Regarding the degree of difficulty of the case, the Government claimed that the case had been complex. In particular they stressed that in order to establish which objects the shared property consisted of, and to assess their value, the court had to order a number of expert opinions concerning the value of the disputed property and heard some witnesses. They were of the opinion that the court dealing with the case had showed due diligence. They pointed out that the District Court had scheduled 32 hearings in the course of the proceedings, out of which 5 had been adjourned for reasons independent of the court. The Government argued that the applicant and her ex-husband had contributed to some extent to the length of the proceedings by changing their claims and contesting the statements of another party to the proceedings. They invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

17. The applicant generally disagreed with the Government's submissions. She was of the opinion that her case had not been complex and the value of the shared property had been easy to assess. She submitted that only two issues had been in dispute and thus in her view, the court had not needed so many hearings and expert opinions to examine them. She maintained that no decision on the merits had been issued by the court in the course of more than 9 years. She argued that she had not contributed to the length of the proceedings.

B. The Court's assessment

1. Period to be taken into consideration

18. The Court notes that the proceedings were initiated on 22 May 1988 and they ended on 16 January 1998. They therefore lasted before the first instance court 9 years, 7 months and 25 days, out of which the period of 4 years, 8 months and 15 days fell after 1 May 1996, the date on which Poland's declaration acknowledging the right of individual petition became effective.

2. Reasonableness of the length of the proceedings

19. 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; *Zwierzyński v. Poland*, no. 34049/96, 19 June 2001, § 41; *Zawadzki v. Poland*, no. 34158/96, 20 December 2001, § 69).

20. The Court considers that the case at issue was not particularly complex.

21. As regards the applicant's conduct, the Court notes that apart from an instance of changing her claim and contesting the statements of another party to the proceedings, the Government have not been able to cite any other examples of her allegedly vexatious behaviour. The Court considers that the manner in which the applicant exercised her procedural rights did not substantially contribute to the length of the proceedings.

22. The Court further notes that, although a significant number of hearings was regularly scheduled by the Poznań District Court, the public authorities did not attempt to accelerate the experts' work nor the taking of evidence from the witnesses. The Court would recall that the principal responsibility for the delay due to the expert opinions rests ultimately with the State (see *Capuano v. Italy* judgment of 25 June 1987, Series A no. 119, p. 14, § 32; *Wojnowicz v. Poland*, no. 33082/96, § 65, 21 September 2000).

23. Consequently, having regard to the overall duration of the proceedings and the fact that they were conducted only by one court, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied within the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant sought an award of 20,000 USD for pecuniary and non-pecuniary damage. She submitted that the amount related to suffering and distress caused by the excessive duration of the proceedings. This amount included also the cost of her and her children's medical treatment. The applicant did not supply any documents confirming these costs and expenses.

27. The Government submitted that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention.

28. 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* [GC], no. 30210/96, § 164, ECHR 2000-XI).

29. The Court further considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration on account of 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 2,800 under that head.

B. Costs and expenses

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

C. Default interest

31. 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 2,800 (two thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount, 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 21 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President