



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

FOURTH SECTION

CASE OF JANAS v. POLAND

(Application no. 61454/00)

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 Janas 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. 61454/00) 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 Magdalena Janas ("the applicant"), on 13 January 2000.

2. The applicant was represented by Mr Zbigniew Cichoń, a lawyer practising in Kraków. 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 10 July 2001 the Court decided to communicate the application 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 applicant was born in 1948 and lives in Zakopane, Poland.

5. The applicant and a co-operative "PSS Społem" were co-owners of an estate in Zakopane. On 29 November 1995 the co-operative filed with the Zakopane District Court (*Sąd Rejonowy*) an application for dissolution of the co-ownership of the estate.

6. The court held hearings on 10 and 24 January 1996. On the latter date it ordered an expert opinion. On 21 February 1996 the court held a viewing of the site. On 19 April 1996 the expert submitted his opinion to the trial

court. On 27 May 1996 the court ordered that a supplementary expert opinion be obtained. It was submitted to the court on 28 June 1996.

7. At the hearing held on 18 September 1996 the court heard evidence from an expert. The court further ordered him to prepare a supplementary opinion. It was submitted to the court on 10 October 1996.

8. On 3 February 1997 the court held a hearing and appointed a new expert. On 30 June 1997 the new expert submitted his opinion to the court.

9. At the hearing held on 21 January 1998 the court decided to obtain evidence from yet another expert. The opinion was submitted to the court on 17 June 1998.

10. In her pleading of 3 September 1998 the applicant submitted a new proposal concerning the division of the estate. On 28 September 1998 she revoked it.

11. The court held hearings on 16 December 1998, 22 February and 7 April 1999. On 17 December 1999 the court held a hearing and heard evidence from an expert. At that hearing the applicant authorised her father, who was a court expert, to represent her in the proceedings. As a result, the judge rapporteur asked to be excluded from dealing with the case. On 7 January 2000 the District Court acceded to his request.

12. On 24 January 2000 the applicant challenged the impartiality of all judges sitting in the Zakopane District Court. On 7 March 2000 the Nowy Sącz Regional Court (*Sąd Okręgowy*) dismissed the applicant's challenge.

13. On 15 September 2000 the court held a hearing and ordered another expert opinion. Subsequent hearings were held on 23 April and 23 May 2001. On 6 June 2001 the District Court gave judgment. The applicant appealed. It appears that the proceedings are pending.

THE LAW

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

14. 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...”

15. The Government contested that argument.

16. The period to be taken into consideration began on 29 November 1995. In the light of the material available to the Court at the date of the adoption of the present judgment, the proceedings are still

pending. Their length has accordingly amounted to nearly 8 years and 10 months.

A. Admissibility

17. 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. It must therefore be declared admissible.

B. Merits

18. The Government submitted that the case had been complex. They referred to the fact that the trial court needed to obtain several expert opinions. They further claimed that the authorities had shown due diligence in the proceedings. The hearings had been scheduled regularly and the District Court had effectively supervised the experts. Moreover, they stressed that the applicant had contributed to the prolongation of the proceedings since she had modified her position. Lastly, they alleged that “special diligence” had not been required on the part of the domestic authorities in this case. They invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

19. The applicant replied that some of the expert opinions had been irrelevant for the determination of her claim. She submitted that there had been significant periods of inactivity between the hearings. She further agreed that her challenge of the impartiality of judges sitting in the District Court contributed to some extent to the length of the proceedings but it could not explain their overall duration. In conclusion she stressed that there had been a violation of Article 6 § 1.

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

21. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

22. As to the conduct of the applicant the Court notes that it is true that the applicant had modified her claim, and challenged the impartiality of judges sitting in the District Court, however it does not appear that this significantly prolonged the trial.

23. Considering the conduct of the authorities the Court observes that there were several periods of inactivity in the proceedings i.e. between 30 June 1997 and 21 January 1998, 17 June 1998 and 16 December 1998, 7 April 1999 and 17 December 1999. There were also delays resulting from the slow process of obtaining evidence.

24. Consequently, having regard to the circumstances of the case 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant sought an award of 30,000 Polish zlotys in respect of non-pecuniary damage that she had suffered as a result of the protracted length of the proceedings.

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

29 The Court 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 4,500 euros (“EUR”) under that head.

B. Costs and expenses

30. The applicant also claimed 20,180.49 Polish zlotys for costs and expenses incurred before the domestic courts and before the Court. This amount included 8,000 Polish zlotys in lawyer's fees for preparation and presentation of her case before the Court.

31. 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 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). They

further stressed that the applicant's representative joined the proceedings before the Court at a final stage, after the exchange of observations on admissibility and merits.

32. 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 are 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 and making its assessment on an equitable basis considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

33. 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* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses to be converted into Polish zlotys at the rate applicable at the date of the settlement, plus any tax that may be chargeable on the above amounts;
 - (b) 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;
4. *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