



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

FOURTH SECTION

CASE OF IŻYKOWSKA v. POLAND

(Application no. 7530/02)

JUDGMENT

STRASBOURG

28 September 2004

FINAL

28/12/2004

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 Iżykowska 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 S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 7 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 7530/02) 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, Ms Maria Iżykowska (“the applicant”), on 5 August 2001.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołasiwicz of the Ministry of Foreign Affairs.

3. On 8 July 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 FACTS

4. The applicant was born in 1950 and lives in Warszawa.

5. On 15 October 1993 the Warsaw District Court (*Sąd Rejonowy*) declared that the heirs to the applicant late mother's estate were the applicant, her father, and her sister. The estate consisted of a house and a plot of land located in Warsaw.

6. On 14 November 1994 the applicant's sister (“the petitioner”) instituted non-contentious proceedings (*postępowanie nieprocesowe*) before the Warsaw District Court (*Sąd Rejonowy w Warszawie*) in which she requested that the co-ownership of the house and the land be dissolved.

7. On 22 March 1995 the court held the first hearing.

8. Subsequently, hearings were held on 1 February, 7 March and 15 October 1996.

9. On 6 January 1997 the court, sitting *in camera*, decided to obtain an expert opinion. On 15 February 1997 an expert prepared the opinion. On 21 February 1997 the District Court, sitting *in camera*, gave a decision regarding the fee for the expert.

10. Between 16 October 1996 and 28 October 1997 no hearings were held.

11. The hearings scheduled for 29 October and 16 December 1997 were adjourned because of the absence of the petitioner.

12. Subsequently, hearings were held on 4 February, 19 June and 31 July 1998.

13. On 22 October 1998 the court ordered a second expert opinion. The opinion was submitted to the court on 20 January 1999.

14. Between 1 August 1998 and 15 April 1999 no hearings were held.

15. Hearings scheduled for 16 April, 2 June, and 9 September 1999 were adjourned because of the absence of the petitioner and expert witnesses.

16. On 22 November 1999 the District Court held the next hearing at which it ordered that a fourth expert opinion be prepared.

17. Between 23 November 1999 and 8 November 2001 no hearings were held.

18. Subsequently, the court held hearings on 9 November and 5 December 2001 as well as 21 February 2002.

19. On 24 January and 7 April 2003 the Warsaw District Court held hearings.

20. The proceedings are pending.

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 14 November 1994 and has not yet ended. It follows that the proceedings have so far lasted 9 years and 10 months.

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. It must therefore be declared admissible.

B. Merits

25. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

26. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

27. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 304,657 Polish zlotys (PLN) in respect of pecuniary and 15,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government asked the court to dismiss the applicant's claims in respect of pecuniary damage. The Government further submitted that the applicant's claims in respect of non-pecuniary damage were excessive.

31. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On

the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 8,500 under that head.

B. Costs and expenses

32. The applicant also claimed PLN 1,368.75 for the costs and expenses incurred before the Court.

33. The Government left the matter to the Court's discretion.

34. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 300 covering costs and expenses for the proceedings before the Court.

C. Default interest

35. 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 8,500 (eight thousand five hundred euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, 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 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 28 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President