



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

FOURTH SECTION

CASE OF FAŁĘCKA v. POLAND

(Application no. 52524/99)

JUDGMENT

STRASBOURG

5 October 2004

FINAL

05/01/2005

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 Fałęcka v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM, *judges*,

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

Having deliberated in private on 14 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 52524/99) 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, Ms Barbara Fałęcka ("the applicant"), on 8 July 1997.

2. The applicant was represented by Mr P. Sołhaj and Mr K. Tor, lawyers practising in Cracow, Poland. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and, subsequently, Ms. S. Jaczewska and Mr J. Wołasiewicz, of the Ministry of Foreign Affairs.

3. On 4 March 2003 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1937 and lives in Cracow, Poland.

A. Facts prior to 1 May 1993

5. On 5 February 1987 the applicant lodged a claim for division of her matrimonial property with the Cracow District Court (*Sąd Rejonowy*).

6. The court held the first hearing on 15 July 1987.

7. Between 1987 and 1991 the court held 14 hearings (6 in 1987, 1 in 1988, 4 in 1989, 2 in 1990 and 1 in 1991).

B. Facts after 1 May 1993

8. On 16 November 1993 and 23 September 1994 the court held hearings.

9. On 5 June 1995 the court ordered that expert evidence be obtained. The expert opinion was delivered to the court on 11 January 1996.

10. On 25 August 1995, 17 April, 24 June and 23 September 1997 the court held hearings.

11. On an unspecified date in May 1998 the court decided to obtain fresh expert evidence. The expert submitted his report to the court on 26 June 1998.

12. On 31 August 1998 the court held a hearing.

13. On 29 December 1998 the court gave judgment.

14. During the proceedings the composition of the court changed 9 times.

15. The applicant several times complained to the President of the Cracow Regional Court about the slow conduct of the proceedings. In reply, the President admitted that the proceedings were indeed too long and informed the applicant that he would supervise their further conduct.

16. On an unspecified date in 1999 the applicant's husband lodged an appeal against the first-instance judgment with the Cracow Regional Court (*Sąd Okręgowy*).

17. On 15 February 2000 the court dismissed the appeal.

THE LAW

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

18. 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. This provision 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..."

19. The Government contested that argument.

20. The period to be taken into consideration began only on 1 May 1993, when Poland's declaration recognising 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.

The period in question ended on 15 February 2000. It thus lasted approximately 13 years, of which 6 years, 9 months and 14 days fall within the Court's jurisdiction *ratione temporis*.

A. Admissibility

1. Article 6 § 1

21. 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. Article 1 of Protocol No. 1

22. The applicant further complained in general terms that the length of the proceedings complained of had infringed her right to the peaceful enjoyment of possessions, as guaranteed by Article 1 of Protocol No. 1.

23. However, the Court considers that the material in its possession does not disclose any appearance of a violation of the applicant's property rights.

Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

B. Merits

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

25. 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).

26. 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

27. 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

28. The applicant claimed 272,000 Polish zlotys (PLN) in respect of both pecuniary and non-pecuniary damage.

29. The Government contested these claims.

30. 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 certainly suffered non-pecuniary damage, such as distress and frustration resulting from the excessive length of the proceedings. Accordingly, taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant 3,600 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed 71,600 PLN for the costs and expenses incurred before the domestic courts.

32. The Government contested the claim.

33. The Court notes firstly that the applicant failed to submit itemised particulars of her claim, together with the relevant supporting documents or vouchers, as required under Rule 60 of the Rules of Court. 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 rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

34. 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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
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 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President