



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

FOURTH SECTION

CASE OF MALINOWSKA-BIEDRZYCKA v. POLAND

(Application no. 63390/00)

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 Malinowska-Biedrzycka v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs V. STRÁŽNICKÁ,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM,

Ms L. MIJOVIĆ,

Mr D. SPIELMANN, *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. 63390/00) 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, Ms Jadwiga Malinowska-Biedrzycka ("the applicant"), on 19 January 1999.

2. The applicant was represented by Mr W. Szwajdler, a lawyer practising in Sopot. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki, and subsequently, Mr J. Woławsiewicz of the Ministry of Foreign Affairs.

3. On 10 July 2001 the Court 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 decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1935 and lives in Sopot, Poland

A. Facts before 1 May 1993

5. In October 1988 the applicant lodged with the Gdańsk District Court (*Sąd Rejonowy*) an application for division of the matrimonial property. Her former husband, Mr R.B., whom she divorced in 1988, was a party to those proceedings. The matrimonial property consisted, *inter alia*, of a house in Gdańsk.

6. The District Court held several hearings. Some of them were adjourned because of the applicant's former husband's absence. The court ordered several expert opinions.

B. Facts after 1 May 1993

7. The hearings scheduled for 20 September and 13 October 1993 were adjourned. The applicant failed to appear at these hearings due to the illness and subsequent death of her daughter.

8. On 22 November 1993 the court held a hearing.

9. Subsequently, hearings were held on 21 February, 31 May and 29 September 1994. The court heard witnesses and imposed a fine on a witness who failed to appear before the court.

10. In 1995 the court held six hearings at which it heard the parties and witnesses. It further decided that a new expert opinion should be obtained.

11. The inspection of the property scheduled for 5 February 1996 did not take place because the applicant's former husband had refused to let her and her lawyer enter the property in question.

12. On 4 April 1996 the court ordered another expert report and a court-expert inspected the property. He submitted his expert opinion to the court on 23 May 1996.

13. Subsequently, both parties challenged the expert opinion.

14. The hearings scheduled for 13 August and 13 September 1996 were adjourned upon the application of the applicant's former husband. The subsequent hearings scheduled for 25 October and 29 November 1996 were also adjourned since the expert witness had failed to appear before the court.

15. The court held a hearing on 7 January 1997. It heard an expert witness and ordered that a supplementary opinion be prepared.

16. At the hearing held on 25 March 1997 the applicant's former husband requested the court to stay the proceedings.

17. On 3 June 1997 the court decided to stay the proceedings since it established that the determination of the case depended on the outcome of another set of proceedings.

18. On 9 December 1997 the applicant applied to resume the proceedings because the reason for staying had ceased to exist as the other set of proceedings had ended with the Supreme Court's judgment of 13 August 1997.

19. On 16 March 1998 the Gdańsk District Court resumed the proceedings.

20. On 19 June and 5 November 1998 the court held hearings. Subsequently, the trial court decided to hold a view of the estate and to obtain an additional expert opinion. Two views of the property scheduled for 6 and 26 January 1999 did not take place.

21. Subsequently, the court held hearings on 17 January and 3 April 2000. It heard an expert witness and ordered that two new experts' opinions be prepared.

22. It appears that the experts refused to prepare their opinions and on 24 October 2000 the court ordered another expert to prepare an additional opinion.

23. On 30 May 2001 the court held the next hearing.

24. Subsequently, hearings were held on 11 July and 17 August 2001.

25. Subsequently, hearings were held on 27 February, 26 June and 27 October 2002. The trial court decided that an expert opinion should be obtained.

26. On 15 and 29 January 2003 the court held a hearing and heard expert witnesses.

27. Subsequently, hearings were held on 12 March, 14 May, 2 July, 5 August, 18 September, 9 November and 16 December 2003. Some of the hearings were adjourned.

28. On 29 January 2004 the Gdańsk District Court held a hearing and on 1 April 2004 it gave judgment.

29. On 31 May 2004 both parties lodged appeals.

30. The proceedings are pending.

THE LAW

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

31. 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...”

32. The Government contested that argument.

33. The Court notes that the period to be taken into consideration began not in October 1988 when the applicant initiated the proceedings, but on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. The proceedings are still pending.

It follows that the proceedings have lasted so far almost sixteen years, out of which over eleven years and four months are taken into consideration by the Court.

34. In assessing the reasonableness of time in question the Court will have regard to the state of the case on 1 May 1993.

A. Admissibility

35. 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

36. 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).

37. 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).

38. 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

39. 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

40. The applicant claimed 15,000 euros (EUR) in respect of pecuniary and EUR 12,500 in respect of non-pecuniary damage.

41. The Government submitted that the applicant's claims were excessive.

42. 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).

43. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the instant case and deciding on equitable basis, the applicant should be awarded EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant also claimed EUR 2,000 by way of legal costs incurred before the domestic courts and those incurred before the Court.

45. The Government submitted that they could not bear any responsibility for the costs and expenses incurred by the applicant during the proceedings before the domestic courts.

46. 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 above criteria and the nature of the issues before it, the Court considers that EUR 1,000 constitutes a reasonable award.

C. Default interest

47. 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, the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;

- (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
- (iii) 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 5 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President