



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

FOURTH SECTION

CASE OF SIKORA v. POLAND

(Application no. 64764/01)

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 Sikora 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. BORRERO BORRERO,
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. 64764/01) 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, Felicja Sikora ("the applicant"), on 14 March 2000.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Mr. J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 21 March 2003 the Court decided to communicate the complaint concerning the length of the proceedings. 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 1925 and lives in Praszka.

5. On 28 March 1991 the applicant lodged a motion with the Oleśno District Court, claiming a division of inheritance and dissolution of co-ownership of a certain property.

6. The court held hearings on: 15 May 1991, 28 August 1991, 29 January 1992, 10 April 1992, 18 May 1992, 24 August 1992, 30 September 1992, 23 February 1993, 7 June 1993 and 28 March 1994.

7. Having regard to the lack of progress in the proceedings, and apparently aiming at obtaining possession of the property by other legal means, on 13 April 1993 the applicant lodged a motion with the Oleśno

District Court, claiming acquisitive prescription of half of the property in question. By a decision of 11 May 1994 the Oleśno District Court dismissed her motion. By a decision of 27 September 1994 the Częstochowa Regional Court dismissed her further appeal and upheld the contested decision.

8. Further hearings in the dissolution case were held on 3 June 1998, 30 December 1999, 29 March 2000 and 23 May 2000.

9. The court ordered a number of expert opinions. They were submitted to the court on: 22 December 1991, 3 July 1992, 8 September 1997, 12 May 1998, 16 June 1998, 9 December 1998, 9 February 1999, 16 April 1999, 11 May 1999, 8 October 1999 and 27 November 2000.

10. By a decision of 10 January 2001 the Oleśno District Court stayed the proceedings due to the fact that one of the parties to the proceedings had died. By virtue of the same decision the court resumed the proceedings, having regard to his heirs' request that the proceedings be resumed.

11. On 3 June 2003 the Oleśno District Court gave a judgment on the merits.

12. On 16 December 2003 the Opole Regional Court dismissed the applicant's appeal.

13. By a decision of 28 June 2004 the Supreme Court declined to examine the cassation appeal, considering that it had not been shown that arguable public interest grounds existed which would justify the examination of the appeal.

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 agreed with that argument.

16. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of 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 Court notes that the proceedings were initiated on 28 March 1991 and ended on 28 June 2004. They thus lasted 13 years and 3 months of which 11 years, 1 month and 27 days falls within the Court's jurisdiction *ratione temporis*.

A. Admissibility

17. The Government considered that the present application was admissible under Article 35 § 3 of the Convention.

18. 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.

B. Merits

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 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).

20. 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).

21. Court notes that the Government accepted that the length of proceedings in the applicant's case was excessive and therefore there had been a violation of Article 6 § 1 of the Convention.

22. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 300.000 Polish zlotys in respect of pecuniary and non-pecuniary damage.

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

27. 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).

28. 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 6000 under that head.

B. Costs and expenses

29. The applicant did not claim further reimbursement of legal costs and expenses incurred in the preparation of the case.

C. Default interest

30. 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 6000 (six thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amounts, 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;

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