



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

FOURTH SECTION

CASE OF LIZUT-SKWAREK v. POLAND

(Application no. 71625/01)

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 Lizut-Skwarek 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. 71625/01) 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, Mrs Maria Lizut-Skwarek ("the applicant"), on 7 March 2000.

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

3. On 5 June 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 1948 and lives in Lublin, Poland.

5. On 4 January 1994 Ms A.O-K. and Ms G.T. ("the plaintiffs") instituted civil proceedings against the applicant before the Lublin District Court (*Sąd Rejonowy*) in which they sought a ruling on how the property co-owned by the applicant should be used by all co-owners.

6. On 20 May 1994 the court held the first hearing.

7. In November 1994 the plaintiffs modified their application and requested that co-ownership of the plot of the land and a building be dissolved (*zniesienie współwłasności*).

8. Subsequently, hearings were held on 9 December 1994, 13 and 27 January 1995.

9. In August 1994, the applicant lodged with the Lublin District Court a civil action for payment against Ms A.O-K. and Ms G.T. She sought reimbursement of maintenance costs in respect of the property and payment of rent for their office. On 28 November 1994 the Lublin District Court decided to join the case with the proceedings concerning the dissolution of co-ownership.

10. Between 28 January and 16 October 1995 no hearings were held.

11. At the next hearing held on 17 October 1995 the court decided to hold a view of the property.

12. On 8 November 1995 the judge with an expert viewed the house.

13. In December 1995 the parties challenged the judge. On 31 January 1996 the Lublin District Court dismissed the application. On 21 March 1996 the Lublin Regional Court dismissed their appeal.

14. On 26 April 1996 the applicant applied to the court for an interim ruling on her claim for payment lodged in August 1994.

15. In 1996 the Lublin District Court held three hearings and ordered expert opinions.

16. Subsequently, the court held hearings on 28 January and 25 February 1997. The court heard an expert witness and requested the third expert opinion.

17. Between February 1997 and February 1998 the court, sitting *in camera*, gave several decisions concerning expert opinions. No hearings were held.

18. On 19 February, 10 April, 14 May, 4 and 26 June 1998 the court held hearings at which it heard several expert witnesses.

19. No hearings were held between 27 June 1998 and 10 February 1999.

20. At the hearings held on 11 February and 25 March 1999 the court heard two expert witnesses and ordered that the sixth expert opinion be obtained.

21. Between 29 September 1999 and 7 January 2000 the court held four hearings at which it heard expert witnesses.

22. At the hearing held on 20 January 2000 the Lublin District Court gave a preliminary decision (*postanowienie wstępne*) and allowed Ms A.O-K. and Ms G.T. to carry out some construction work in the house.

23. The applicant and other co-owners appealed against this decision.

24. The Lublin Regional Court (*Sąd Okręgowy*) held several hearings and on 27 March 2001 it quashed the preliminary decision of the Lublin District Court.

25. In 2000 the applicant complained to the Minister of Justice about the length of the proceedings.

26. On 31 August and 10 December 2001 the trial court held hearings.

27. In 2002 the Lublin District Court held seven hearings and on 10 October 2002 it gave decision and dissolved the co-ownership of the building.

28. Both parties lodged appeals against this decision.

29. On 6 March 2003 the Lublin Regional Court held a hearing.

30. At the subsequent hearing held on 9 April 2003 the parties concluded a friendly settlement. Subsequently, the Lublin Regional Court discontinued the proceedings.

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 period to be taken into consideration began on 4 January 1994 and ended on 9 April 2003. It follows that the proceedings lasted nine years and three months.

A. Admissibility

34. 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

35. 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).

36. 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).

37. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

38. The applicant further complained of the fact that in Poland there was no court to which application could be made to complain of the excessive length of proceedings. She relied on Article 13 of the Convention.

39. The Government refrained from commenting on that complaint.

40. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

41. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). Furthermore, the Court refers to its case-law to the effect that no specific remedy in respect of the excessive length of civil proceedings exists under Polish law (*D.M. v. Poland*; no. 13557/02, § 47, 14 October 2003).

42. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby she could enforce her right to a “hearing within a reasonable time” as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 41,000 Polish zlotys (PLN) in respect of pecuniary and PLN 12,000 in respect of non-pecuniary damage.

45. The Government submitted that the claims in respect of pecuniary damage were irrelevant and should be dismissed.

46. 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. The Court considers that it should award 2,750 euros (EUR) under this head.

B. Costs and expenses

47. The applicant also claimed PLN 16,700 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

48. 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.

49. 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 and considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 for the proceedings before the Court.

C. Default interest

50. 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* that there has been a violation of Article 13 of the Convention;
4. *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 2,750 (two thousand seven hundred fifty euros) in respect of non-pecuniary damage;
- (ii) EUR 500 (five hundred 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;

5. *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