



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

FOURTH SECTION

CASE OF SIKORSKI v. POLAND

(Application no. 46004/99)

JUDGMENT

STRASBOURG

9 November 2004

FINAL

09/02/2005

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 Sikorski 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 19 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 46004/99) 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, Zdzisław Sikorski ("the applicant"), on 6 August 1998.

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. The applicant alleged that the civil proceedings in his case exceeded a "reasonable time" within the meaning of Article 6 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 24 June 2003 the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1935 and lives in Wrocław, Poland.

10. On 28 March 1991 Ms S. filed with the Oleśno District Court an action in which she sought the distribution of an inheritance and the dissolution of the co-ownership of the inherited property. The applicant was one of the heirs to that property.

11. The court held hearings on 15 May, 28 August and 14 November 1991, 29 January, 22 April, 27 May and 30 September 1992, 23 February and 7 June 1993, 28 March and 25 April 1994, 28 June 1995, 27 March and 7 August 1996, 6 January, 17 November and 11 December 1997, as well as 3 June and 22 June 1998.

12. On 4 March 1999 the hearing was adjourned because of the absence of the applicant's lawyer.

13. Further hearings were held on 30 March, 23 April, 5 May, 11 May, 23 June, 14 July and 28 July 1999.

14. The hearing scheduled for 8 September 1999 was adjourned because of an illness of a court expert.

15. The court held hearings on 14 October and 30 December 1999, 17 January, 29 March, 20 April, 28 April, 18 May, 23 May and 16 June 2000.

16. On 20 June 2000, in reply to the applicant's complaint about the excessive length of the proceedings, the President of the Częstochowa Regional Court noted that the delay resulted from the complexity of the case, the parties' numerous requests concerning evidence and their petitions challenging expert opinions. She admitted that the court experts had failed to issue their opinions within the time-limits. The President considered that in one of such cases, in 1997, the court had failed to use disciplinary measures against the expert. She finally informed the applicant that she had instituted proceedings which could result in the dismissal of certain experts.

17. On 8 November 2000 the Oleśno District Court imposed a fine on an expert for his non-compliance with the time-limit for issuing his opinion.

18. On 10 January 2001 the court quashed its decision of 8 November 2000.

19. On the same day the court summoned certain individuals to participate in the proceedings.

20. On 20 February 2001 it stayed the proceedings because of the death of one of the participants. On 5 June 2001 the court resumed the examination of the case.

21. It held hearings on 6 July 2001 and 4 January 2002. The hearings scheduled for 15 February and 27 March 2002 were adjourned because of

the absence of Ms S. Hearings were held on 29 May and 20 September 2002.

22. On 2 April 2003 the court served a copy of an expert opinion on the applicant for observations.

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

24. On 16 December 2003 the Opole Regional Court dismissed an appeal against that judgment.

25. 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 OF THE CONVENTION

26. 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...”

A. Parties' submissions

27. The Government claimed that the proceedings had been complex, referring to a number of expert opinions that had to be ordered. They further observed that the participants to the proceedings had expressed significantly different opinions on how to divide the disputed property, which had complicated the case. The Government noted that because of the death of a participant to the proceedings, the court had to stay them, in accordance with the Polish Code of Civil Procedure.

28. The Government submitted that hearings had been scheduled at regular intervals. They pointed out that a fine had been imposed on an expert for non-compliance with the time-limit for submitting his opinion, which showed the court's due diligence in conducting the proceedings.

29. The Government were of the view that the applicant had partly contributed to the delay by his numerous petitions concerning evidence and challenging expert opinions. They noted that on 14 May 1999 he changed his statement of claim.

30. The applicant stated that it was true that the participants to the proceedings had expressed contradictory opinions on how to divide the property and for that reason they entrusted the court with their dispute.

31. He submitted that his petitions concerning challenges to expert opinions had often been caused by the fact that during long intervals between hearings some opinions had become out-of-date. The applicant maintained that he had changed his statement of claim in 1999 because of a mistake in an expert opinion, which had subsequently been corrected.

32. The applicant did not agree that hearings had been scheduled at regular intervals. He noted that the Government had focused on the period between 1999 and 2001, whereas before that period the court had remained inactive.

B. The Court's assessment

1. Period to be taken into consideration

33. 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*.

2. Reasonableness of the length of the proceedings

34. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of 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; *Zwierzynski v. Poland*, no. 34049/96, 19 June 2001, § 41; *Zawadzki v. Poland*, no. 34158/96, 20 December 2001, § 69).

35. The Court considers that the case at issue was not particularly complex.

36. As regards the applicant's conduct, the Court notes that apart from an instance of changing his claim and challenging expert opinions, the Government have not been able to cite any other examples of his allegedly vexatious behaviour. The Court considers that the manner in which the applicant exercised his procedural rights did not substantially contribute to the length of the proceedings.

37. The Court further notes that, although a significant number of hearings was regularly scheduled by the first-instance court, the judicial authorities did not attempt to accelerate the experts' work or the taking of evidence from the witnesses. It is to be noted that even the domestic authorities admitted that the delay had been caused to a certain extent by court experts, who had not complied with time-limit. The Court would recall that the principal responsibility for the delay due to the expert opinions rests ultimately with the State (see *Capuano v. Italy* judgment of 25 June 1987, Series A no. 119, p. 14, § 32; *Wojnowicz v. Poland*, no. 33082/96, § 65, 21 September 2000).

38. Consequently, having regard to the overall duration of the proceedings, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

39. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed PLN 61,910 in respect of pecuniary damage and PLN 50,000 in respect of non-pecuniary damage.

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

43. 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 him under that head (see, *mutatis mutandis Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

44. 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

45. The applicant also claimed PLN 12,325 for the costs and expenses incurred before the domestic courts (lawyer's fees, fees for experts etc). He did not submit any documents confirming his claim.

46. The Government invited the Court to make an award, if any, only in so far as the costs and expenses were actually and necessarily incurred in the preparation of the applicant's case before the Court and were reasonable as to quantum. They relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 14, § 36).

47. According to the Court's case-law, an applicant is entitled to reimbursement of the 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

48. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President