



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

FOURTH SECTION

CASE OF ZARJEWSKA v. POLAND

(Application no. 48114/99)

JUDGMENT

STRASBOURG

21 December 2004

FINAL

21/03/2005

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 Zarjewska v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

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

Having deliberated in private on 30 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 48114/99) 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 Elżbieta Zarjewska ("the applicant"), on 7 December 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, in particular, that the proceedings in her case exceeded a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

4. 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.

5. By a decision of 13 November 2003 the Court declared the application partly admissible.

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

7. On 1 November 2004 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

8. The applicant was born in 1946 and lives in Grudziądz, Poland.

1. Proceedings against a dentist and a health centre

9. On 18 February 1994 the applicant filed with the Grudziądz District Court (*sąd rejonowy*) an action in which she claimed compensation from a dentist for alleged malpractice. Subsequently, she requested the court to stay the proceedings for half a year.

10. On 5 October 1994 the court refused the applicant's request for exemption from the court costs. Her appeal against that decision was rejected as having been lodged outside the prescribed time-limit.

11. The applicant submits that she did not attend the hearing held on 8 February 1995 because she had not been informed about it.

12. On 1 March 1995 the applicant also sued the health centre at which the defendant worked. On the same day the court held a hearing. On 28 April 1995 it granted the applicant's subsequent request for exemption from the court costs.

13. On 5 May 1995 the applicant requested the court to stay the proceedings for three months.

14. On 16 May 1995 the court held a hearing. It refused the applicant's request to have the proceedings stayed.

15. On 6 June 1995 the court gave judgment, in which it dismissed the applicant's action. She appealed.

16. On 6 October 1995 the Toruń Regional Court (*sąd wojewódzki*) quashed a part of the first-instance judgment and remitted the case, in this part, for re-examination. It dismissed the remainder of the appeal.

17. On 11 December 1995 the Grudziądz District Court held a hearing. On 19 January 1996 the case was transferred to the Regional Court, because the applicant had increased the amount of the compensation claimed.

18. The Toruń Regional Court held hearings on 9 May 1996 and in October 1996. The hearing scheduled for 3 December 1996 was adjourned due to the absence of a witness and the defendant's representative.

19. On 16 January 1997 the court held a further hearing, at which it ordered an expert opinion. On 13 June 1997 the experts returned the case file to the court, submitting that the applicant had refused to undergo a medical examination. On 18 June 1997 she requested the appointment of other experts.

20. The court held hearings on 21 November 1997 and 10 February 1998.

21. On 10 February 1998 it gave judgment, in which it dismissed the action. The applicant appealed.

22. On 18 June 1998 the Gdańsk Court of Appeal (*sąd apelacyjny*) dismissed her appeal. She lodged a cassation appeal with the Supreme Court.

23. On 26 July 2001 the Supreme Court dismissed that cassation appeal.

2. Proceedings against doctors

24. On 27 April 1995 the applicant filed with the Grudziądz District Court an action in which she claimed compensation for alleged malpractice on the part of doctors who had performed a laser operation on her face.

25. On 5 May 1995 the court transferred the case to the Toruń District Court.

26. On 10 July 1995 the latter court refused the applicant's request for exemption from the court costs. On 9 August 1995 the Toruń Regional Court dismissed her appeal against that decision.

27. On 7 September 1995 the District Court summoned the applicant to specify the defendant party.

28. On 13 October 1995 the first hearing was held. Subsequently, the applicant increased the claimed amount.

29. The court summoned her to specify her claim. It adjourned the hearing scheduled for 14 November 1995 due to the applicant's failure to comply with its order relating to her claim.

30. On 20 November 1995 she increased the amount of the claimed compensation.

31. On 23 November 1995 the court exempted the applicant from the court costs and transferred the case to the Toruń Regional Court, following the increase of the applicant's claims.

32. On 7 March 1996 the court held a hearing. On 3 April 1996 it ordered the preparation of an expert opinion. The opinion was submitted to the court on 30 May 1996.

33. On 27 June 1996 the applicant challenged that opinion. On 16 September 1996 she requested the court to appoint another expert.

34. At the hearing held on 17 September the court requested the applicant to indicate other experts who could prepare the opinion. She provided the required information on 28 October 1996. On 6 December 1996 the court ordered another expert opinion, which was supposed to be prepared by 31 March 1997. In July 1997 the Warsaw Academy of Medicine, in charge of the preparation of that opinion, informed the court that due to the prolonged absence of an expert it was unable to set up a three-member commission to examine the case, the applicant having refused to be examined by only two members. In November 1997 the court summoned the Academy to expedite the work on the opinion, on pain of a

fine. The opinion was submitted to the applicant in March 1998. On 17 April 1998 she challenged it.

35. On 17 April 1998 the court held a hearing.

36. On 24 April 1998 the Toruń Regional Court gave judgment, in which it dismissed the action. The applicant appealed.

37. On 20 October 1998 the Gdańsk Court of Appeal dismissed her appeal. The applicant lodged a cassation appeal with the Supreme Court. On 24 November 1998 a legal-aid lawyer was appointed for her. On 11 January 1999 the Supreme Court summoned that lawyer to rectify procedural defects in that cassation appeal.

38. On 31 August 2001 the Supreme Court refused to entertain the applicant's cassation appeal. It relied on a provision of the newly amended Code of Civil Procedure empowering it to leave without examination manifestly ill-founded appeals or appeals in cases where no serious legal issue arises.

THE LAW

I. ALLEGED VIOLATION OF THE RIGHT TO A TRIAL WITHIN A “REASONABLE TIME”

39. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” principle, 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...”

40. The Government contested that argument.

A. Proceedings against a dentist and a health centre

41. The period to be taken into consideration began on 18 February 1994 and ended on 26 July 2001. It thus lasted 7 years, 5 months and 8 days.

1. The Parties' submissions

42. The Government were of the view that the case had been rather complex and made reference to the expert opinions that had to be ordered in the course of the proceedings.

They submitted that the applicant had substantially contributed to the delay in the examination of her case by having requested the staying of the proceedings and the extension of her claim, which had resulted in the

transfer of the case to another court. The Government further noted that the applicant had on two occasions failed to attend medical examinations scheduled by the court. She also did not appear before it at two hearings.

The Government considered that the domestic courts had dealt with the case with due diligence. They pointed out, *inter alia*, that the court had fixed a three months' time-limit for the preparation of an expert opinion and refused the applicant's request to stay the proceedings.

43. The applicant was of the opinion that the case had not been complex, but the court had complicated it. She denied having contributed to the delay by the extension of her claim, submitting that she had exercised her procedural rights. The applicant stated that she had not attended one of the hearings referred to by the Government because of the funeral of her father and had not been informed about the other hearing.

She noted that hearings had been scheduled at times at half-yearly intervals.

2. The Court's assessment

44. 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).

45. The Court considers that the case was not particularly difficult to determine (cf. *Rawa v. Poland*, no. 38804/97, § 48, 14 January 2003).

46. It agrees with the Government's contention that the applicant's conduct significantly contributed to the delay in the examination of the case. Some of the examples referred to by the Government, especially the extension of the applicant's claim, can be to a certain extent explained by the exercising of her procedural rights. The Court, however, points out that the applicant had to be aware that such an act could lead to delays the consequences of which she would have to bear (see *Malicka-Wąsowska v. Poland* (dec.), no. 41413/98, 5 April 2001).

47. The Court notes that it took four years and four months for the courts of first-instance and the Court of Appeal to deal with the case, including its re-examination. There were no unusually long periods of inactivity. The only period that could be a cause for concern is the period of three years for the examination of the cassation appeal by the Supreme Court. It appears that almost no action was taken by that court during the period at issue. The Court notes that during the material time the Supreme Court had to deal with an increased workload and that subsequently the authorities took remedial action (see, *Kępa v. Poland* (dec), no. 43978/98, 30 September

2003). However, having regard to the lengthy period during which the case lay dormant before the Supreme Court, the Court finds that, despite the relatively expeditious procedure before the lower courts, the overall period of the proceedings was excessive (see, *Domańska v. Poland*, no. 74073/01, § 32, 25 May 2004).

48. Consequently, the Court concludes that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

B. Proceedings against doctors

49. The period to be taken into consideration began on 27 April 1995 and ended on 31 August 2001. It thus lasted 6 years, 4 months and 4 days.

1. The Parties' submissions

50. The Government were of the view that the case had been rather complex and mentioned expert opinions ordered by the domestic court. They considered that the applicant had substantially contributed to the prolongation of the proceedings by changing the amount of the compensation claimed and challenging the expert opinions. She failed duly to specify her claim and refused to undergo a medical examination by a two-member commission.

The Government stated that the domestic courts had disclosed due diligence in the examination of the case. The first-instance court fixed time-limits for the submission of pleadings. It warned the Warsaw Academy of Medicine that it would impose a fine on that institution if it failed to prepare the requested opinion in due time.

51. The applicant did not agree that the case had been complex. She noted that the court had done nothing to expedite the work of the experts, as a result of which she had had to wait sixteen months for one opinion. The applicant submitted that hearings had been scheduled at long intervals.

She maintained that she should not be criticised for having changed her claims, because she had a right to do so.

2. The Court's assessment

52. The Court is of the view that the case at issue was not unusually complex.

53. It notes that the applicant's conduct prolonged the proceedings in a manner similar to that in the proceedings against the health centre (see above) and the applicant should have likewise been aware of the influence her acts could have on the handling of her case.

54. The Court observes that, as in the other set of proceedings complained of by the applicant, the first-instance courts and the Court of Appeal cannot be said to have dealt with the case without sufficient attention. It points out, however, that the preparation of an expert opinion took over one year. It is true that the Regional Court undertook measures to expedite the work of the experts, but only in November 1997, that is nearly a year after the opinion had been ordered. The Court recalls 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).

55. Although the examination of the case by the lower courts was completed within a relatively short period, the Supreme Court prolonged it by a further two and a half years. Having regard to the fact that practically no action was taken during the latter period and ultimately the Supreme Court refused to entertain the cassation appeal lodged by the applicant, the Court finds that the case was not dealt within a reasonable time (see, *Kępa v. Poland* (dec), no. 43978/98, 30 September 2003; *Domańska v. Poland*, no. 74073/01, § 32, 25 May 2004).

56. Consequently, having regard to the circumstances of the case and taking into account 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed EUR 250,000 in respect of non-pecuniary damage.

60. The Government considered that amount exorbitant.

61. The Court is of the view that the applicant can reasonably be regarded as having suffered non-pecuniary damage on account of the length of the proceedings. Accordingly, it considers that, in the particular

circumstances of the case and deciding on an equitable basis, the applicant should be awarded EUR 3,000.

B. Costs and expenses

62. The applicant also claimed 4,500 Polish zlotys (PLN) for the costs and expenses incurred mainly before the domestic courts. Among the documents submitted by the applicant in support of her claim there are postage receipts in respect of the correspondence sent by her to the Court in the total amount of PLN 91.10. The applicant submitted also a receipt for PLN 305.24 paid by her for the translation of the Government's observations.

63. The Government considered that the costs claimed by the applicant related to the proceedings before the domestic courts and were not liable to be paid by the State in a complaint concerning the length of those proceedings.

64. 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 sum of EUR 90 in respect of the proceedings before the Court.

C. Default interest

65. 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 in respect of the proceedings against a dentist and a health centre;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the proceedings against physicians;
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 3,000 (three thousand euros) in

respect of non-pecuniary damage and EUR 90 (ninety euros) in respect of costs and expenses, plus any tax that may be chargeable on the above amounts, to be converted into Polish zlotys 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 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 21 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President