



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

FOURTH SECTION

CASE OF KOLASIŃSKI v. POLAND

(Application no. 46243/99)

JUDGMENT

STRASBOURG

1 February 2005

FINAL

01/05/2005

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kolasiński v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
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 11 January 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 46243/99) 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, Mr Henryk Kolasiński ("the applicant"), on 9 February 1998.

2. The applicant was represented by Ms F. Pniewska, a lawyer practising in Koszalin, Poland. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki, and subsequently, Mr J. Wołasiwicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the length of civil proceedings in his case had been excessive.

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 25 November 2003 the Court declared the application partly admissible.

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, Henryk Kolasiński, is a Polish national who was born in 1927 and lives in Koszalin, Poland.

A. Facts prior to 1 May 1993

9. The applicant's wife died on 15 May 1990. On 2 October 1990 the Koszalin District Court (*Sąd Rejonowy*) declared that the applicant, his stepdaughter - J.K. - and her two grandsons were to inherit the estate.

10. On 28 December 1990 M.F., one of the grandsons, filed an application for distribution of the estate of the applicant's wife with the Koszalin District Court. He also applied to the court for dissolution of the joint matrimonial property of the applicant and his late wife.

11. On 4 December 1992 the court held the first hearing.

B. Facts after 30 April 1993

12. In a letter of 5 May 1993 the applicant requested the President of the Civil Division of the Koszalin District Court to expedite the proceedings.

13. On 5 November 1993 and 20 January 1994 the trial court held hearings.

14. On 17 February 1994 the District Court gave a final decision. The applicant appealed. On 5 July 1994 the Koszalin Regional Court (*Sąd Wojewódzki*) set aside the first-instance decision and remitted the case.

15. On 9 March and 18 May 1995 the court held hearings. At a hearing held on 29 June 1995 the court ordered that expert evidence be obtained.

16. On 24 November 1995 the applicant complained to the President of the Koszalin District Court about the slow conduct of the proceedings. On 21 February 1996 the President of the Koszalin Regional Court informed the applicant that his complaint about the delays in the proceedings was justified.

17. On 10 June 1996 the court held a hearing.

18. On 22 August 1996 the District Court gave a decision. On 30 September 1996 the applicant lodged an appeal with the Koszalin Regional Court.

19. On 11 February and 25 March 1997 the Regional Court held hearings. On 22 April 1997 the Koszalin Regional Court set aside the impugned decision and remitted the case.

20. On 11 September 1997 the court held a hearing. On 22 October 1997 the applicant again requested the President of the Koszalin District Court to expedite the proceedings.

21. At the hearing held on 4 December 1997 the parties settled their claims in respect of a number of movables. Subsequently, the court discontinued the proceedings in that respect.

22. On 19 February 1998 the applicant complained about the length of the proceedings to the Minister of Justice.

23. On 10 April 1998 the court held a hearing and ordered that expert evidence be obtained.

24. On 24 April 1998 the District Court gave a partial decision (*postanowienie częściowe*). On 24 May 1998 the District Court held a hearing.

25. On 25 May 1998 the Minister of Justice informed the applicant that the President of the Koszalin Regional Court would supervise the proceedings. The District Court held further hearings on 3 July, 7 and 28 August 1998. On 1 October 1998 an expert submitted his report to the court.

26. At the hearing held on 20 November 1998 the District Court gave a decision. On 15 January 1999 the applicant lodged an appeal with the Koszalin Regional Court. On 27 April 1999 the applicant complained to the Minister of Justice about a delay in the proceedings and the fact that his appeal of 15 January 1999 had not been transmitted to the Regional Court.

27. On 28 September 1999 the Regional Court held a hearing. The hearings listed for 12 and 26 October 1999 were adjourned.

28. On 4 November 1999 the Regional Court upheld the first-instance decision. On 15 March 2000 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*). The proceedings were terminated by a decision of the Supreme Court of 23 April 2001.

THE LAW

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

29. The applicant complained that the length of the proceedings in his case exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention, which reads in so far as relevant:

“In the determination of his civil rights and obligations..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

30. The Government contested this view.

A. Period to be taken into consideration

31. The Court notes that the period to be taken into consideration began not on 28 December 1990, when the proceedings were initiated, but on 1 May 1993, when Poland's declaration recognising the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see, among other authorities, *Humen v. Poland*, [GC], no. 26614/95, 15 October 1999, § 59). The period in question ended on 23 April 2001 (see paragraph 28 above). It thus lasted 10 years and 4 months, of which the period of nearly 8 years falls within the Court's jurisdiction *ratione temporis*.

B. Reasonableness of the length of the proceedings

1. The Government's submissions

32. The Government submitted that the case had been complex. It had involved complicated issues of fact and law. Moreover, the relevant courts had had to obtain several expert opinions in order to determine the assets of the matrimonial property.

33. They further claimed that what was at stake for the applicant in the proceedings was solely of a pecuniary nature.

34. The Government also maintained that the authorities had shown due diligence in the case.

35. As to the conduct of the applicant, the Government submitted that he had contributed to some extent to the prolongation of the proceedings. In particular, they referred to the fact that on three occasions he had appealed against the decisions given by the District Court. They further noted that he had submitted numerous letters and pleadings modifying his position.

In conclusion, they invited the Court to reject the complaint as being manifestly ill-founded.

2. The applicant's submissions

36. The applicant disagreed. Referring to the Government's assertion that he had caused delays in the proceedings, he argued that most of the letters he had produced had aimed at accelerating the proceedings.

Finally, the applicant argued that there had been much at stake for him in the proceedings since they concerned his late wife's estate. He submitted, in particular, that during the domestic proceedings he had not been able to use the funds deposited in their common bank account.

3. *The Court's assessment*

37. The Court considers that, even though the case involved a degree of complexity on account of the need to obtain extensive evidence, it cannot be said that this in itself justified the length of proceedings.

38. The Court is of the view that what was at stake for the applicant in the domestic litigation was of some importance for him.

39. As to the conduct of the applicant, the Court finds no reason to conclude that the applicant's exercise of his procedural rights was unreasonable or amounted to dilatory conduct. It is not, therefore, persuaded by the Government's arguments that the applicant contributed to the length of the proceedings.

40. The Court further observes that on 1 May 1993, the date when Poland recognised the right of individual petition, the proceedings before the District Court had already lasted two years and a half and only one hearing had taken place (see paragraphs 10-11 above). The Court notes that after 1 May 1993 there were periods of inactivity attributable to the authorities. In particular, there was a delay of nearly one year, between 29 June 1995 and 10 June 1996, during which no hearing was held (see paragraphs 15-17 above). Moreover, there was a further delay, between 15 January and 28 September 1999, following the applicant's appeal of 15 January 1999 (see paragraphs 26 and 27 above).

41. The Court also notes that the domestic authorities acknowledged that the proceedings had not been conducted speedily (see paragraphs 16 and 25 above).

42. Even given the number of the instances involved, assessing all the relevant facts as a whole including the total length of the proceedings and having regard to the state of the case on 1 May 1993, 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.

43. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant sought an award of 35,337.92 Polish zlotys (PLN) in respect of pecuniary damage. The applicant also sought an award of PLN 75,600.00 to compensate for the moral damage he had suffered as a result of the protracted proceedings.

46. The Government submitted that the applicant's claims were excessive. They further stated that there had been no causal link between the applicant's claim for pecuniary damage and the alleged violation of the Convention.

47. As regards the alleged 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).

48. On the other hand, the Court considers that the applicant certainly suffered damage of non-pecuniary nature such as distress and frustration resulting from 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 4,000 under that head.

C. Costs and expenses

49. The applicant claimed PLN 2,212 for the legal fees and translation costs incurred in the proceedings before the Court and submitted relevant bills in support of this claim.

50. The Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred 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. 36, § 6).

51. The Court has assessed the claim in the light of the principles laid down in its case-law (see, for instance, *Nikolova v. Bulgaria* [GC], no. 31195/96 § 79, ECHR 1999-II; and *Kudła v. Poland*, cited above, § 168). Applying the said criteria to the present case the Court considers it reasonable to award the applicant EUR 530 for his costs and expenses together with any value-added tax that may be chargeable.

C. Default interest

52. 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, the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 530 (five hundred and thirty 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President