



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

FOURTH SECTION

CASE OF SIBILSKI v. POLAND

(Application no. 64207/01)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Sibilski 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. BORREGO BORREGO, *judges*,

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

Having deliberated in private on 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 64207/01) 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, Mr Antoni Sibilski (“the applicant”), on 9 March 2000.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołasiwicz.

3. On 16 June 2003 the Court decided to communicate the application. 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1957 and lives in Jarocin.

5. On 20 April 1993 the applicant lodged a petition for a divorce with the Poznań Regional Court (*Sąd Wojewódzki*).

6. The Poznań Regional Court held hearings on 24 August and 7 October 1993, 13 January and 26 April 1994.

7. On 1 June 1994 the court ordered an expert opinion. It was submitted to the court on 29 August 1994.

8. Further hearings were held on 15 November 1994, 7 February 1995, 25 April 1995, 10 August 1995, 7 November 1995 and 16 May 1996.

9. On 5 June 1996 the applicant specified his claim and accepted that custody rights be granted to his wife.

10. On 13 September 1996 the court ordered fresh expert evidence. The court requested the Department of Psychology of the Poznań University to expedite the preparation of the opinion on the applicant's child's emotional development.

11. On 21 January 1997 the hearing was adjourned, in order to give the experts more time to prepare the opinion.

12. On 24 January 1997 the court requested the Psychology Department to send back the case file and to submit the opinion. The file was sent back on 21 March 1997; however, no opinion was submitted.

13. On 21 April 1997 the applicant complained to the Ministry of Justice about the length of the proceedings. On 3 June 1997 the Ministry of Justice examined the facts and considered that the applicant's complaint was justified.

14. The court held further hearings on 26 June 1997, 23 July 1997, 18 September 1997, 24 November 1997, 26 January 1998, 16 March 1998, 20 April 1998, 8 June 1998 and 13 July 1998.

15. On 26 August 1998 the applicant sent another letter to the Ministry of Justice complaining about the length of the proceedings. In September 1998 the case was put under the administrative supervision of the Ministry of Justice.

16. The Department of Psychology of the Poznań University failed to submit the relevant expert opinion. As a consequence, the court ordered a new expert opinion on 6 October 1998.

17. On 4 December 1998, upon the applicant's further complaint, the Ombudsman examined the case and considered the complaint justified. The Ombudsman requested the President of the Poznań Regional Court to take the necessary steps to accelerate the proceedings.

18. On 22 February 1999 and 8 March 1999 the court held hearings.

19. On 22 March 1999 the Poznań Regional Court gave judgment and dissolved the applicant's marriage. The court awarded parental rights to both parents and ordered that the child's permanent residence be with the applicant.

20. Both parties to the proceedings appealed. On 5 November 1999 the Poznań Court of Appeal dismissed the appeals and upheld the first-instance judgment. The judgment was served on the applicant on 7 January 2000.

THE LAW

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

21. The applicant complained under Article 3, 5 § 1 and Article 6 § 1 of the Convention that the length of the proceedings had been incompatible with the “reasonable time” requirement. This complaint falls to be examined under Article 6 § 1, 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...”

22. The Government contested that argument.

23. 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 20 April 1993 and ended on 7 January 2000. They thus lasted 6 years, 8 months and 17 days of which 6 years, 8 months and 6 days falls within the Court's jurisdiction *ratione temporis*.

A. Admissibility

24. The Court notes that the application 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

25. The Government submitted that the case had been complex. The authorities had shown due diligence in the proceedings. In particular the court of first instance held nearly 22 hearings. There was further no period of inactivity in the proceedings. According to the Government, the applicant had contributed to the prolongation of the proceedings. One of the hearings had been adjourned at his request, moreover he had lodged 13 evidence motions. Lastly, they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

26. The applicant agreed that the case had been complex. However, he claimed that there had been significant periods of inactivity between the hearings. In particular no hearing was held between 16 May 1996 and 26 June 1997. In sum there had been a violation of Article 6 § 1.

27. 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).

28. In cases relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

29. In the present case the Court observes, that while the second instance proceedings were concluded rather speedily, the case was examined by the court of first-instance for a substantial period of nearly 6 years (see paragraphs 5 and 20 above). Moreover, the case concerned the applicant's civil status which required special diligence on the part of the domestic authorities.

30. 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).

31. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 150,000 PLN [approx. 37,500 EUR] in respect of non-pecuniary damage.

35. The Government contested the claim.

36. The Court 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 3,000 under that head.

B. Costs and expenses

37. The applicant also claimed 5,000 PLN [approx. 1,250 EUR] for the costs and expenses incurred before the domestic courts. That amount corresponded in particular to his lawyer's fees.

38. The Government contested the claim.

39. 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.

C. Default interest

40. 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 in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of the settlement, plus any tax that may be chargeable on the above amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] 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 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President