



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

FOURTH SECTION

CASE OF NIEROJEWSKA v. POLAND

(Application no. 77835/01)

JUDGMENT

STRASBOURG

22 August 2006

FINAL

22/11/2006

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 Nierojewska v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 11 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 77835/01) 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, Ms Izabella Nierojewska (“the applicant”), on 5 November 2000.

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

3. On 1 September 2005 the President of the Fourth Section decided to communicate the application. 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1937 and lives in Sopot, Poland.

5. On 15 March 1994 the applicant filed a petition for divorce with the Gdańsk Regional Court. She also sought an interim maintenance award.

6. The applicant’s husband failed to appear at a reconciliation meeting on 14 April 1994. The subsequent reconciliation meeting held on 16 May 1994 failed. On that date the applicant’s husband requested the Gdańsk Regional Court that the case be transmitted to the Elbląg Regional Court

due to his change of domicile. That request was dismissed on 26 May 1994. The appeal lodged by the applicant's husband was rejected.

7. On 21 September 1994 and on 28 February 1995 the applicant sought an increase of her interim maintenance award. She also requested the court to determine the way in which the spouses would occupy the matrimonial home.

8. On 13 June 1995 the Regional Court ordered the defendant to pay PLN 500 per month to the applicant by way of interim maintenance. It also determined the issue of the spouses' occupation of the matrimonial home. Both parties appealed against that decision. On 31 October 1995 the Gdańsk Court of Appeal upheld the contested decision.

9. On 5 October 1995 the applicant requested the Elbląg Regional Court to draw up an inventory of the assets located in the matrimonial home. On 13 October 1995 the Elbląg Regional Court transmitted that request to the Gdańsk Regional Court. On 19 April 1996 the Gdańsk Court of Appeal quashed that decision. On 1 July 1996 the Elbląg Regional Court again transmitted the case to the Gdańsk Regional Court, finding that the latter court was competent in the matter of drawing up an inventory.

10. On 30 August 1996 the applicant increased her maintenance claims. She also informed the court that the defendant had continuously failed to comply with the interim maintenance order of 13 June 1995 and had prevented the applicant from occupying the matrimonial home as determined by the court in the same decision.

11. On an unspecified date in August or September 1996 the applicant's husband filed an application for an interim maintenance order against the applicant.

12. On 16 December 1996 the Elbląg District Court convicted the applicant's husband of having prevented the applicant from entering their matrimonial home and fined him PLN 200. On 23 April 1997 the Elbląg Regional Court upheld the first-instance judgment.

13. On 17 October and 6 December 1996 the applicant's husband requested the court to hear evidence from new witnesses, including some who lived in Germany. On 27 March 1997 the President of the Regional Court requested that two witnesses who lived in Germany be heard by the court in Mannheim pursuant to the relevant agreement on legal co-operation between Germany and Poland.

14. On 8 September 1997 the defendant requested that the judge who was hearing the case should withdraw from it. On 11 September 1997 the Gdańsk Regional Court dismissed his request. That decision was upheld on appeal on 30 March 1998.

15. In the meantime a new judge was assigned to hear the case.

16. On 3 December 1997 the Regional Court dismissed the defendant's application for an interim maintenance award. That decision was upheld on appeal on 30 March 1998.

17. On 18 November 1998 the court heard evidence from the applicant and her husband.

18. The Regional Court held 20 hearings on the following dates: 26 October 1994; 6 January, 1 March, 26 April and 31 May 1995; 14 February, 6 March, 4 April, 26 June, 11 September, 17 October and 6 December 1996; 12 February, 22 July, 27 August, 8 September 1997 and 3 December 1997; and 18 September, 16 October and 18 November 1998.

19. On 30 November 1998 the Gdańsk Regional Court granted a divorce, finding that the defendant had been responsible for the breakdown of their marriage. It also ordered the defendant to pay maintenance to the applicant in the amount of PLN 600 per month and determined the issue of the occupation of the matrimonial home.

20. The defendant filed an appeal against that judgment. He also applied for exemption from payment of the court fees for the appeal proceedings. On 4 March 1999 the Regional Court dismissed the defendant's request. That decision was upheld on appeal on 23 June 1999.

21. Subsequently, the defendant again requested to be exempted from payment of the court fees. On 8 September 1999 the Regional Court dismissed his request. The Court of Appeal upheld that decision on 17 February 2000.

22. On 10 April 2000 the Regional Court rejected the defendant's appeal against the judgment of 30 November 1998 for failure to pay the relevant court fee.

23. On 4 May 2000 the applicant requested the Regional Court to make an enforcement order in her favour in respect of the judgment of 30 November 1998. On 29 May 2000 the Regional Court issued the enforcement order.

II. RELEVANT DOMESTIC LAW

24. The legal provisions applicable at the material time as well as matters of practice are set out in paragraphs 26-35 of the judgment delivered by the Court on 30 May 2006 in the case of *Barszcz v. Poland*, no. 71152/01.

THE LAW

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

25. 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...”

26. The Government contested that argument.

27. The period to be taken into consideration began on 15 March 1994 and ended on 29 May 2000. It thus lasted over 6 years and 2 months for one level of jurisdiction.

A. Admissibility

28. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004 when the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”) had come into force, the applicant had a possibility of lodging with the Polish civil courts under Article 417 of the Civil Code read together with Article 16 of the 2004 Act a claim for compensation for damage suffered due to the excessive length of proceedings. They argued that the three-year prescription period for the purposes of a compensation claim in tort based on the excessive length of proceedings could run from a date later than the date on which a final decision in these proceedings had been given. The Government further submitted that such a possibility had existed in Polish law before the entry into force of the 2004 Act ever since the judgment of the Constitutional Court of 4 December 2001, which entered into force on 18 December 2001.

29. The applicant contested the Government’s arguments.

30. The Court observes that the proceedings at issue ended at the latest on 29 May 2000, which is more than three years before the relevant provisions of the 2004 Act read together with the Civil Code became effective. It follows that the limitation period for the State’s liability for tort set out in Article 442 of the Code Civil had expired before 17 September 2004.

31. The Court notes that the arguments raised by the Government are the same as those already examined by the Court in previous cases against Poland (see *Małasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October

2003; *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005-...; *Barszcz v. Poland*, no. 71152/01, §§ 41-45, 30 May 2006) and the Government have not submitted any new arguments which would lead the Court to depart from its previous findings. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

32. 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

33. 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). 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 for the enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

34. 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).

35. 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 6 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

36. The applicant complained under Article 6 § 1 of the Convention that the divorce proceedings were unfair.

However, it appears that the applicant did not lodge an appeal against the Gdańsk Regional Court's judgment of 30 November 1998.

37. Even assuming that the rule of exhaustion of domestic remedies was complied with in the present case, the Court recalls that it is not called upon

to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The Court finds that in the proceedings under consideration, throughout which the applicant was represented by counsel, there is no appearance of unfairness or arbitrariness which would infringe the guarantees of a fair hearing within the meaning of Article 6 § 1 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Invoking Articles 13, 14, 17 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 5 of Protocol No. 7 to the Convention, the applicant complained, in essence, that the courts had failed to secure her share in the matrimonial property despite her repeated requests. The applicant further alleged, relying on Article 5 § 1 of the Convention, that the length of the divorce proceedings had resulted in the deterioration of her health and her impoverishment.

The Court, having examined those complaints, and regardless of other possible grounds of inadmissibility, finds nothing in the case file which might disclose any appearance of a violation of these Convention provisions.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed PLN 500,000 in respect of pecuniary damage and PLN 100,000 in respect of non-pecuniary damage.

41. The Government contested these claims.

42. 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. Ruling on an equitable basis, and having regard in particular to the fact that the proceedings in issue concerned the applicant's civil status, it awards award her EUR 4,500 under that head.

B. Costs and expenses

43. The applicant did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

C. Default interest

44. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President