



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

FOURTH SECTION

CASE OF RYBCZYŃSKA v. POLAND

(Application no. 57764/00)

JUDGMENT

STRASBOURG

10 October 2006

FINAL

10/01/2007

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 Rybczyńska 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 K. TRAJA,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 19 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 57764/00) 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, Mrs Helena Rybczyńska (“the applicant”), on 18 November 1999.

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

3. On 22 August 2005 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. It further gave priority of the application in view of the applicant’s age, pursuant to Rule 41 of the Rules of the Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. On an unspecified date in 1976 the applicant’s neighbour cut several trees on a plot of land which allegedly belonged to the applicant’s mother. Consequently, proceedings aimed at the determination of ownership of the controversial strip of land were initiated. On 15 April 1981 administrative proceedings concerning the ownership of the land were reopened. On 10 June 1983 the administrative organ referred the dispute to a civil court.

5. On 29 April 1983 the applicant's mother died and the applicant became a party to the proceedings.

6. On 19 June 1988 the Sucha Beskidzka District Court (*Sąd Rejonowy*) gave a decision. Upon the applicant's appeal, on 17 February 1989 the Bielsko Biała Regional Court (*Sąd Wojewódzki*) quashed this decision and remitted the case.

7. On 22 June 1989 the court stayed the proceedings as the applicant had failed to indicate the addresses of some of the parties to the proceedings.

8. The applicant on six occasions unsuccessfully requested the court to resume the proceedings. The proceedings were finally resumed by the Sucha Beskidzka District Court on 8 June 1995.

9. On 9 and 27 June 1995 the court held hearings. On 5 June 1996 the proceedings were again stayed. They were resumed on 11 September 1996.

10. On 7 and 21 January 1997 the Sucha Beskidzka District Court held hearings. On the latter date the court ordered that an expert opinion be obtained. On 19 November 1997 the court ordered the expert to pay a fine because he had failed to submit his report within the prescribed time-limit.

11. Further hearings were held on 19 December 1997, 23 September 1998 and 2 October 1998.

12. On 2 October 1998 the Sucha Beskidzka District Court gave a decision. On 8 April 1999 the District Court rejected the applicant's appeal for failure to comply with formal requirements.

13. On 21 May 1999 the Bielsko Biała Regional Court rejected the applicant's interim appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS.

14. The applicant complained that the length of the proceedings was 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..."

15. The Government contested that argument.

16. 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 proceedings ended on 21 May 1999. Their length accordingly amounted to 6 years and 3 weeks.

A. Admissibility

17. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004 when the 2004 Act had come into force, the applicant had a possibility of lodging a claim for compensation for damages suffered due to the excessive length of proceedings with the Polish civil courts under Article 417 of the Civil Code read together with Article 16 of the 2004 Act. 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.

18. The applicant contested the Government's arguments.

19. 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). In particular in those cases no evidence of a judicial practice of the Supreme Court or at least of the appellate courts has been provided to show that a claim for compensation for unreasonable length of proceedings could have been successful when the proceedings complained of had come to an end more than three years prior to 17 September 2004.

20. In the instant case, the Government have not submitted any new arguments which would lead the Court to depart from its previous findings.

The Court observes that the proceedings at issue ended at the latest on 21 May 1999, 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.

For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

21. 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

22. 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).

23. 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).

24. 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.

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

II. ALLEGED VIOLATION OF ARTICLES 6 AND 14 OF THE CONVENTION ON ACCOUNT OF AN UNFAIR TRIAL.

26. The applicant further complains about the result of the proceedings and their unfairness.

27. However, the Court observes that the applicant failed to lodge an appeal against the decision of the Sucha Beskidzka District Court of 2 October 1998 in accordance with the correct procedural requirements. Therefore, she has not exhausted the remedies available under Polish law.

28. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed PLN 65,000 in respect of pecuniary damage. This amount corresponded to the value of the trees which had been felled on

her property. She further asked for 90,000 PLN under the head of non-pecuniary damage.

31. The Government contested these claims.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have suffered non-pecuniary damage such as distress and frustration resulting from the protracted length of the proceedings. Ruling on an equitable basis, it awards her EUR 3,500 under that head.

B. Costs and expenses

33. The applicant also claimed 10,000 PLN for the costs and expenses incurred before the domestic courts and the Court.

34. The Government contested the claim.

35. The Court notes that the applicant did not submit any relevant documents in support of her claim. It therefore considers that there is no basis for making any award for costs and expenses.

C. Default interest

36. 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 3,500 (three thousand five hundred 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 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 10 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President