



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

FOURTH SECTION

CASE OF KWIATKOWSKI v. POLAND

(Application no. 4560/04)

JUDGMENT

STRASBOURG

17 October 2006

FINAL

17/01/2007

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 Kwiatkowski 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 26 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 4560/04) 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 Zbigniew Kwiatkowski (“the applicant”), on 20 January 2004.

2. The applicant was represented by Mr P. Heliński, a lawyer practising in Krosno. The Polish 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 to the Government. 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1949 and lives in Bad Marienberg, Germany.

A. The first set of divorce proceedings

5. Between December 1993 and 15 October 1998 the applicant was involved in divorce proceedings. On the latter date the proceedings were discontinued as the applicant had withdrawn his petition for divorce.

B. The second set of divorce proceedings

6. On 5 November 1998 the applicant's wife ("the petitioner") lodged with the Warsaw Regional Court (*Sąd Okręgowy*) a petition for divorce.

7. It appears that the court held over twenty hearings. Some of the hearings were adjourned due to the absence of the petitioner or witnesses. The first hearing therefore was held on 4 February 2000. The court heard in total six witnesses.

8. On 7 October 2004 the Regional Court gave judgment. Both parties appealed against the judgment.

9. On 4 January 2005 the applicant lodged with the Warsaw Court of Appeal a complaint about a breach of the right to have his case heard within a reasonable time. He relied on the 2004 Act. On 28 February 2005 the Court of Appeal dismissed his complaint. The court examined the course of the impugned proceedings and held that there had been no delays for which the Regional Court could be held responsible. The court finally held that the case was complex.

10. On 24 April 2006 the court rejected the petitioner's appeal as she had failed to pay court fees.

11. The appellate proceedings concerning the appeal lodged by the applicant are pending before the Warsaw Court of Appeal (*Sąd Apelacyjny*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE FIRST SET OF CIVIL PROCEEDINGS

Admissibility

12. The applicant complained about the unreasonable length of the first set of civil proceedings introduced by him in December 1993.

13. However, pursuant to Article 35 § 1 of the Convention:

"1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken..."

14. The Court notes that this set of proceedings ended on 15 October 1998, thus more than six months before the date on which this complaint was submitted to the Court.

15. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE SECOND SET OF CIVIL PROCEEDINGS

16. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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...”

17. The Government contested that argument.

18. The period to be taken into consideration began on 5 November 1998 and has not yet ended. It has thus lasted [7 years and 10 months] for two levels of jurisdiction.

A. Admissibility

19. 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

20. 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).

21. 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). 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. The Court notes that the proceedings before the court of first instance lasted almost 6 years and that the first hearing was held after fifteen months. The Court reiterates that 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 (see *Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I, *Kubiszyn v. Poland*, no. 37437/97, § 34, 30 January 2003). The Court therefore considers that the Warsaw Court of Appeal in dismissing the applicant's complaint that the length of the proceedings in his case had exceeded a reasonable time failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

22. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 39,000 Polish zlotys (PLN) in respect of pecuniary and PLN 10,000¹ in respect of non-pecuniary damage.

25. The Government contested these claims.

26. 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 awards the applicant 2,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant also claimed EUR 1,500 for costs and expenses incurred before the Court.

28. The Government contested the claim.

29. 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

¹ Note for the deliberations: approximately EUR 2,500

as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the sum claimed should be awarded in full.

C. Default interest

30. 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 second set of 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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, 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 17 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President