



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

FOURTH SECTION

CASE OF NOWAK v. POLAND

(Application no. 8612/02)

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 Nowak 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. 8612/02) 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 Beata Maria Nowak (“the applicant”), on 7 February 2002.

2. The applicant was represented by Ms A. Tomaszewska-Wójcik, a lawyer practising in Gniezno. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. On 26 August 2005 the President of the Fourth Section decided to give notice of 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1958 and lives in Gniezno.

A. The facts prior to 1 May 1993

5. The applicant and her husband married in 1987. Their daughter was born in the same year. At the end of 1988 the husband left the applicant and their daughter.

6. On 1 February 1989 the applicant's husband filed a petition for divorce with the Gniezno District Court. He also sought eviction of the applicant from their matrimonial home. In the course of the proceedings the claimant modified his claims on several occasions.

7. On 9 May 1990 the Gniezno District Court ordered the claimant to pay interim maintenance to the applicant. The amount of interim maintenance was increased in the course of the proceedings on several occasions.

8. On an unspecified later date the applicant requested that judge P.K. withdraw from sitting in the case. On 4 October 1990 the Gniezno District Court granted the applicant's request.

9. On an unspecified date at the beginning of 1992 the applicant requested that judge M.S. withdraw from sitting in the case. At about the same time, five other judges of that court declared that they wanted to withdraw. On 19 February 1992 the Poznań Regional Court dismissed the applicant's request in respect of judge M.S. It acceded to the requests to withdraw in respect of four judges of the Gniezno District Court. The applicant appealed against that decision. On 17 April 1992 the Poznań Court of Appeal quashed the contested decision and remitted the case. On 14 September 1992 the Poznań Regional Court ordered that two other judges of the District Court, including judge M.S., withdraw from the divorce case. It also ordered that the case be transmitted to the Września District Court for examination. The Regional Court considered that the particular position of the claimant, who was a doctor in the small town of Gniezno, might raise subjective doubts on the part of the applicant as to the impartiality of the judges of the Gniezno District Court.

B. The facts after 1 May 1993

10. On 14 May 1993 the Września District Court exempted the applicant from the court fees.

11. In 1995 the applicant was declared to have the so-called "third degree of invalidity" and was granted an invalidity pension.

12. On 9 May 1996 a panel of three judges of the Września District Court dismissed the applicant's request for judge M.J. to withdraw from the case. It found that the applicant's claims of bias based on alleged delays in the examination of her application for an increase of interim maintenance and lack of supervision of the experts had no bearing on the judge's impartiality. The panel of the District Court also considered that there had

been no links between judge M.J. and the parties to the proceedings which could call into question the impartiality of that judge. The applicant's appeal against that decision was dismissed by the Poznań Regional Court on 10 September 1996. The Regional Court endorsed the findings of the District Court.

13. On 8 July 1997 the Września District Court dismissed the applicant's renewed request for judge M.J. to withdraw. It also imposed a fine of PLN 300 on the applicant for the submission of a groundless request. It appears that the applicant appealed against that decision. However, she has not produced a copy of the decision given on appeal.

14. On an unspecified date before 1 July 1998 the applicant submitted to the District Court a medical certificate and requested an adjournment of the hearing scheduled for 1 July 1998 due to her illness.

15. On 1 July 1998 the court held a hearing and heard the claimant and two witnesses. The hearing in the case was closed.

16. On 3 July 1998 the applicant requested the court to reopen the hearing, referring to her medical certificate and to the fact that she had not been heard by the court.

17. On 6 July 1998 the Września District Court gave judgment and granted a divorce. It found that both parties had been at fault in respect of the breakdown of their marriage. It ordered the claimant to pay the applicant PLN 800 per month in maintenance in respect of their daughter. The applicant appealed against that judgment.

18. On 5 February 1999 the Poznań Regional Court held a hearing and heard both parties. On 9 February 1999 it gave judgment and dismissed the applicant's appeal. The applicant lodged a cassation appeal against the judgment of the Regional Court.

19. On 26 July 2001 the Supreme Court held a hearing. On 9 August 2001 it gave judgment and dismissed the applicant's cassation appeal. It found, *inter alia*, that the District Court's decision to proceed with the hearing on 1 July 1998 had been incorrect, but that in any event it had not prejudiced the applicant's right to defend her interests effectively in the proceedings. The Supreme Court had regard to the fact that the applicant had been heard earlier by the District Court on two occasions. Moreover, both the claimant and the defendant had been heard in the appeal proceedings before the Regional Court. In respect of the two witnesses who had been heard on 1 July 1998, the Supreme Court found that their evidence had been immaterial for the determination of the divorce case. The judgment of the Supreme Court was served on the applicant on 11 September 2001.

II. RELEVANT DOMESTIC LAW

20. The legal provisions applicable at the material time as well as matters of practice concerning the remedies against unreasonable length of proceedings 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 AS REGARDS THE LENGTH OF PROCEEDINGS

21. 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...”

22. The Government contested that argument.

23. The Court notes that the proceedings commenced on 1 February 1989 when the applicant’s husband filed a petition for divorce. However, 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. 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.

The period in question ended on 9 August 2001. It thus lasted 8 years and over 3 months for three levels of jurisdiction.

A. Admissibility

24. 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.

25. The applicant contested the Government's arguments.

26. The Court observes that the proceedings at issue ended at the latest on 9 August 2001, 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 in tort set out in Article 442 of the Code Civil had expired before 17 September 2004.

27. The Court notes that the arguments raised by the Government are the same as those already examined and rejected 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.

28. 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

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

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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

32. The applicant complained under Article 6 § 1 of the Convention that the divorce proceedings had been unfair. In particular, she alleged that the Września District Court had heard witnesses on 1 July 1998 despite her request to adjourn the hearing on the basis of a medical certificate confirming her illness and that it had refused to hear various witnesses and to admit documentary evidence. Furthermore, she complained that she had been wrongly found to have been at fault in respect of the breakdown of the marriage.

33. 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). It further recalls that the admissibility and assessment of evidence are matters that fall to be decided primarily at the domestic level. Having regard to the Supreme Court’s findings in its judgment of 9 August 2001 (see paragraph 19 above), the Court considers that in the divorce proceedings, seen as a whole, 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF LACK OF IMPARTIALITY

34. The applicant also complained under Article 6 § 1 of the Convention about the lack of impartiality of the Gniezno District Court and the Września District Court.

35. The Court notes that on 14 September 1992 the Poznań Regional Court ordered that the applicant’s case be transferred from the Gniezno District Court to the Września District Court. It recalls that Poland recognised the right of individual petition as from 1 May 1993. Consequently, the complaint in respect of the alleged lack of impartiality of the Gniezno District Court falls outside the Court’s jurisdiction *ratione temporis*.

36. In respect of the Września District Court, the Court notes that the applicant's complaint, if limited to the proceedings before the Września District Court which were terminated on 6 July 1998, was lodged more than six months after the latter date. In any event, the Court observes that the applicant alleged bias on the part of judge M.J. of the Września District Court who was hearing the case. However, in May and September 1996 respectively, the panel of the Września District Court and, on appeal, the Regional Court examined those assertions and found them entirely unsubstantiated (see paragraphs 12-13 above). The applicant's further request to the same effect was dismissed as groundless on 8 July 1997. It appears that in the subsequent proceedings, the applicant did not allege that the courts dealing with her case lacked impartiality.

It follows that this complaint, regardless of other possible grounds of inadmissibility, 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

37. 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

38. The applicant claimed 12,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

39. The Government did not express an opinion on the matter.

40. 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 suffered 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 her EUR 3,000 under that head.

B. Costs and expenses

41. The applicant also claimed PLN 2,440 for the costs and expenses incurred before the Court.

42. The Government did not express an opinion on the matter.

43. 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 considers it reasonable to award the sum of EUR 600 for 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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) in respect of costs and expenses, 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 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