



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

FOURTH SECTION

CASE OF BARANOWSKA v. POLAND

(Application no. 72994/01)

JUDGMENT

STRASBOURG

24 October 2006

FINAL

24/01/2007

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 Baranowska 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 3 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 72994/01) 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. H. Baranowska (“the applicant”) on 3 April 2001. The applicant was represented by Ms M. Heller-Kaczmarek, a lawyer practising in Poznań.

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

3. On 7 October 2005 the Court decided to give notice of the application to the Government. 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Poznań.

5. On 12 March 1987 the applicant lodged a motion with the Poznań District Court concerning the inheritance of her mother’s and her father’s estate.

6. On 25 April 1987 the Poznań District Court ordered two court files from other proceedings to be joined to the case.

7. On 22 March 1988 the Poznań District Court urged the competent court to submit these files.

8. On 6 April 1988 the above-mentioned order was complied with.

9. On 27 June 1988 the first hearing was held. As witnesses had not been summoned properly, the hearing was adjourned.

10. On 14 September 1989 the second hearing was held. As witnesses had not been called properly the hearing was again adjourned.

11. On 14 November 1989 the third hearing was held at which it was decided to appoint two experts.

12. On 8 March 1990 and 6 April 1992 the experts' opinions were submitted to the court.

13. On 28 May 1992 the Poznań District Court issued a decision as to the entitlement to the inheritance. It ruled that the applicant was to inherit $\frac{1}{4}$ of her father's estate and nothing from her mother's. On 18 November 1993 the applicant requested the Minister of Justice to lodge an extraordinary appeal as to the part of the judgment concerning her mother's estate.

14. On 27 September 1994 the Minister of Justice lodged an extraordinary appeal with the Supreme Court, arguing that the decision of 28 May 1992 was in manifest breach of law.

15. On 27 October 1994 the Supreme Court partly quashed the contested decision and remitted the case to the Poznań District Court. In the course of the proceedings another expert opinion was admitted.

16. At the hearing held on 15 February 1995 the court granted the applicant partial exemption from court fees and appointed her a legal-aid lawyer.

17. Subsequent hearings were held on 19 May 1995, 21 June 1995, 1 September 1995 and 13 September 1995.

18. On 12 October 1995 the court conducted an inspection of the real estate.

19. At the hearing held on 3 November 1995 the court decided to impose a fine on a witness who had failed to appear.

20. A subsequent hearing was held on 6 December 1995.

21. On 19 January 1996 a hearing was held at which one of the parties did not appear. The court ordered him to submit a medical certificate and to appear at the next hearing.

22. The hearing held on 21 February 1996 was adjourned due to the absence of other parties to the proceedings. The court ordered them to submit medical certificates and to appear at the next hearing.

23. At the hearing held on 12 April 1996 one of the parties to the proceedings failed to appear and was ordered to appear at the hearing on pain of omission of her statements.

24. Another hearing was held on 16 May 1996.

25. On 21 June 1996 the hearing was adjourned due to the absence of a witness. The court imposed a fine on him.

26. On 10 July 1996 a hearing had to be adjourned since it appeared that one of the witness' whereabouts was incorrect. Another party's lawyer was ordered to submit relevant information within three days on pain of omission of that information as evidence.

27. The next hearing was held on 2 August 1996.

28. On 7 January 1997 an expert opinion was ordered. It was submitted on 6 March 1997.

29. On 11 March 1997 the court ordered a further expert opinion. It was submitted on 20 October 1997.

30. On 10 December 1997 a hearing was held.

31. On 30 January 1998 the Poznań District Court issued a decision. It ruled that the applicant was to inherit a part of her mother's estate. The applicant and another party appealed on 28 April 1998 and 23 June 1998 respectively.

32. On 28 July 1998 a hearing was held before the appellate court.

33. On 2 October 1998 the Poznań Regional Court amended the decision, allowing the applicant's appeal in part. On 23 December 1998 the opponent lodged a cassation appeal.

34. On 19 October 2000 the Supreme Court gave a judgment dismissing the cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE ¹

35. On 17 September 2004 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") entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings. A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length under section 2 read in conjunction with section 5(1) of the 2004 Act.

36. On 18 January 2005 the Supreme Court (*Sąd Najwyższy*) adopted a resolution (no. III SPP 113/04) in which it ruled that while the 2004 Law produced legal effects as from the date of its date of entry into force (17 September 2004), its provisions applied retroactively to all proceedings in which delays had occurred before that date but only when they had not before that date but only when they had not yet been remedied.

¹ For a more detailed presentation of the relevant domestic law see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005; *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005.

THE LAW

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

37. 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...”

38. The Government contested that argument.

39. The proceedings began on 12 March 1987. 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. It ended on 19 October 2000. It thus lasted 7 years and 5 months for three levels of jurisdiction. However, in assessing the reasonableness of the time that elapsed after 1 May 1993, account must be taken of the state of proceedings at the time.

A. Admissibility

40. The Government noted that it was only on 18 November 1993 that the applicant had requested the Minister of Justice to lodge an extraordinary appeal against the decision of 28 May 1992. In the Government’s view the proceedings which were conducted as a result of this motion (and the subsequent motion of the Minister of Justice) should be regarded as a separate set of proceedings. Therefore, only the period following 18 November 1993 should be taken into account.

41. The applicant contested the Government’s argument, maintaining that, according to the law applicable at the material time, the proceedings in question should be treated as one set of proceedings.

42. 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 *C. v. Poland*, no. 27918/95, judgment of 3 May 2001, §§ 33-36) and the Government have not submitted any new elements which would lead the Court to depart from its previous findings. In consequence, the proceedings in question are to be treated as one set of proceedings and the period to be taken into consideration is to be counted from 1 May 1993.

43. The Government further submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004, when the 2004 Act came into force, the applicant had a possibility of lodging with the Polish civil courts a claim for compensation for damage suffered due to the excessive length of proceedings 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.

44. The applicant contested the Government's arguments.

45. 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 *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003; *Ratajczyk v. Poland*; (dec.), 11215/02, 31 May 2005; *Barszcz v. Poland*, no. 71152/01, 30 May 2006) and the Government have not submitted any new elements which would lead the Court to depart from its previous findings.

46. The Government next argued that the possibility of lodging a claim for compensation for damage suffered due to the excessive length of proceedings under Article 417 of the Civil Code had existed in Polish law even before the entry into force of the 2004 Act, namely ever since the judgment of the Constitutional Court of 4 December 2001.

47. The applicant contested the Government's arguments, maintaining that there was no legal basis for lodging a claim for compensation in the circumstances of her case.

48. The Court notes that it has already examined whether after 18 December 2001 and prior to the entry into force of the Law of 17 June 2004 a compensation claim in tort as provided for by Polish civil law was an effective remedy in respect of complaints about the length of proceedings. It held that no evidence of any judicial practice had been provided to show that a claim for compensation based on Article 417 of the Civil Code has ever been successful before the domestic courts (see *Skawińska v. Poland* (dec.), no. 42096/98, 4 March 2003 and *Malasiewicz v. Poland*, no. 22072/02, 14 October 2003). As the Government have failed to submit any new arguments which would cast doubt on its conclusions in these cases, the Court will abide by its previous findings.

49. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

50. 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

The parties' submissions

51. The Government submitted that the case was complex since it required an on-site inspection and the obtaining of two expert opinions and one supplementary expert opinion.

52. The applicant disagreed.

53. The Government were also of the opinion that the interests of the applicant were of a purely pecuniary nature.

54. The applicant did not address this issue

55. The Government submitted that, as regards the conduct of the authorities, the domestic courts had been thorough in their collection of evidence. During the sixteen hearings held the applicant, another party, seven witnesses and one expert witness had been heard; two expert opinions and one supplementary opinion had been ordered and an on-site inspection had been conducted. The courts took disciplinary measures (fines and sanctioning failures to appear) in order to expedite the proceedings.

56. The applicant contested the Government's argument.

57. The Government conceded that the applicant did not contribute to the length of the proceedings.

58. 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).

59. The Court observes that some measures were taken by the courts to expedite the proceedings, the length of which cannot be justified by their complexity alone. It further notes that the applicant did not contribute to the length of proceedings, which fact was also admitted by the Government. It is to be noted that significant delays occurred before 1 May 1993. On that date, after proceedings lasting five years during which three hearings had been held (the first of which had been held over one year after the date of the institution of the proceedings) the case had just passed the first-instance stage. As noted above, the Court can have regard to the state of the proceedings prior to 1 May 1993 in making its assessment of the reasonable-time requirement under Article 6 (see paragraph 52 above). It is also to be observed that no satisfactory explanation has been given for the delay of around twenty-two months taken by the Supreme Court to examine the cassation appeal lodged by the applicant's opponent (see paragraphs 33 and 34 above). This substantial delay had a marked impact on the overall length of the proceedings.

60. 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).

61. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 12,703 euros (EUR) in respect of pecuniary and non-pecuniary damage.

64. The Government contested the claim stating that there was no causal link between the claim and the length of domestic proceedings. The Government further requested the Court to rule, in case of a finding of a violation, that such a finding provided sufficient just satisfaction or to grant satisfaction not exceeding the threshold indicated in the 2004 Act (10,000 PLN).

65. 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 EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant also claimed EUR 509 for costs and expenses incurred before the domestic courts and before the Court.

67. The Government contested the claim. They submitted that there was no indication that any of the domestic costs and expenses claimed by the applicant had been incurred for the purpose of preventing or obtaining redress for the alleged violation.

68. 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 the applicant did not submit any documents showing that he actually incurred any costs and expenses. 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 and in the proceedings before the Court.

C. Default interest

69. 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, 2 000 EUR (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, together with any tax that may be applicable;
 - (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 24 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President