



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

FOURTH SECTION

CASE OF ROMANIAK v. POLAND

(Application no. 53284/99)

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 Romaniak v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr S. PAVLOVSKI,

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. 53284/99) 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 Wanda Romaniak (“the applicant”), on 22 March 1999.

2. The applicant was represented before the Court by Mr T. Gaczyński and Mr M. Szewczyk, lawyers practising in Warszawa. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and subsequently by Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained that the length of civil proceedings in her case had exceeded a reasonable time.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 9 September 2003 the Court declared the application admissible.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicant, Wanda Romaniak, is a Polish national, who was born in 1929 and lives in Głusków.

A. Facts prior to 1 May 1993

8. On 17 September 1980 M.T. lodged a motion with the Warsaw District Court, claiming dissolution of a co-ownership which he shared with the applicant. The land in question consisted of two adjoining parcels and a building, which had been built as a result of the petitioner's and the applicant's financial contributions for the purpose of setting up a business.

9. On 3 April 1981 the Warsaw Regional Court issued a decision allowing M.T. to use part of the property pending the outcome of the proceedings. By the same decision, the court prohibited the destruction of any of the facilities in the building.

10. Subsequently, hearings were held on 1 September 1982, 8 October 1982, 28 January 1983, 13 February 1984, 9 May 1984, 29 October 1984, 19 December 1984 and 2 April 1985.

11. By a partial judgment of 29 April 1985 the Warsaw District Court ruled in favour of the applicant.

12. Upon appeal, on 28 April 1986 the Warsaw Regional Court quashed the decision of 29 April 1985.

13. Between 1986 and 1991 three hearings and one on-site inspection were carried out by the court.

14. On 7 July 1990 the Ministry of Justice, following the applicant's complaint about the length of the proceedings, examined the facts and considered the complaint justified, having found that an expert opinion had not been prepared within the time-limit fixed and that no efforts had been made by the court to discipline the experts. Therefore, the Ministry of Justice took the case under its administrative supervision.

15. On 23 April 1992 the Warsaw District Court issued a decision dissolving the co-ownership of the disputed property in favour of the applicant. The applicant was, however, obliged to pay-off the petitioner.

16. On 12 October 1992 and on 13 October 1992, the applicant and the petitioner, respectively, lodged appeals against the above-mentioned decision.

17. On 6 April 1993 the Warsaw District Court issued a decision forbidding the petitioner from taking down a fence.

B. Facts after 30 April 1993

18. By a judgment of 7 May 1993 the Warsaw Regional Court set aside the decision of 23 April 1992 because of procedural mistakes committed in the proceedings and remitted the case to the first-instance court for re-examination.

19. On 11 October 1993 the Warsaw Regional Court set aside the decision of 6 April 1993.

20. On 16 March 1994 a hearing took place before the Warsaw District Court.

21. On 18 April 1994 the applicant's lawyer withdrew from the case.

22. On 16 May 1994 new expert evidence was ordered.

23. On 15 November 1994 the expert report was submitted to the court.

24. On 3 March 1995 a hearing was held.

25. On 7 April 1995 the Warsaw District Court stayed the proceedings because K.C., another co-owner of the property, had died and his legal successors had to be identified.

26. On 12 September 1995 the information about the legal successors was submitted to the court. On 29 October 1995 the District Court dismissed the request to resume the proceedings. On 15 February 1996 the Regional Court quashed this decision.

27. On 19 September 1996 the court decided to stay the proceedings pending the examination of a motion for the acquisition of the property by prescription, submitted by J.C.

28. On 25 November 1996 the court held a hearing in order to examine the applicant's claim for the return of a part of the building already granted to her by previous judgments.

29. On 10 December 1996 the Warsaw District Court issued a decision prohibiting the petitioner from carrying out reconstruction works.

30. On 17 April 1997 the trial court dismissed the petitioner's appeal against the decision of 10 December 1996.

31. On 20 May 1997 the applicant lodged a motion concerning two expert opinions and requested the court to resume the proceedings.

32. On 2 July 1997 the Warsaw District Court resumed the proceedings.

33. On 29 September 1997 a hearing took place before the Warsaw District Court. The court ordered the preparation of an expert opinion.

34. On 18 November 1997 the court held a hearing.

35. On 8 April 1998 H.S. submitted his expert opinion to the court.

36. On 14 July 1999, upon the applicant's request, the trial court ordered a supplementary opinion to be prepared by H.S.

37. On 3 November 1999 H.S. submitted the supplementary opinion.

38. On 24 November 1999 a hearing was held. Neither the applicant's curator nor her lawyer attended the hearing.

39. On 15 March 2000 a hearing was held.

40. On 29 March 2000 the Warsaw District Court stayed the proceedings because two of the parties to the proceedings had died.

41. On 29 August 2000 the Warsaw District Court refused to resume the proceedings because the parties had failed to submit a decision confirming their inheritance rights. The proceedings were subsequently resumed on 5 January 2001.

42. On 28 March 2001 a hearing was held before the Warsaw District Court. The court ordered the petitioner to submit, within 7 days, the decision confirming his right to inherit.

43. On 29 June 2001 a hearing was held before the Warsaw District Court. The court stayed the proceedings as the petitioner had failed to submit the decision confirming his right to inherit.

44. On 4 March 2003 the court resumed the proceedings.

45. On 4 June 2003 the court stayed the proceedings due to the death of one of the parties.

46. On 24 October 2003 a hearing was held and the court heard witnesses.

47. On 2 April 2004 a hearing was held. The court summoned the applicant to submit her pleadings. On 21 April 2004 the court appointed an expert to prepare a plan for the division of the property.

48. At a hearing on 3 January 2005 the court heard witnesses.

49. On 12 January 2005 the court delivered a partial decision by which it partially dissolved the co-ownership of the property.

50. The hearing scheduled for 3 August 2005 was adjourned due to the absence of the applicant's curator.

51. On 18 November 2005 the parties, including the applicant, declared their intention to sell the property and to conclude a friendly settlement. The proceedings were stayed at their request. Neither of the parties has so far requested that the proceedings be resumed.

THE LAW

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

52. 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..."

53. The Government contested that argument

54. 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 period in question had not yet ended with the adoption of a final judicial decision. It has thus lasted over 13 years for two levels of jurisdiction.

55. 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).

56. The Government submitted that the case was complex on account of the significant number of parties involved in the proceedings and the need to have recourse to expert reports. Furthermore, the case did not require to be processed with special diligence. The Government acknowledged that the applicant and her curator had not contributed to the delay in the proceedings apart from their failure to attend the hearing of 24 November 1999. The Government claimed that the authorities had shown due diligence in the case. They submitted that the court had been unable to speed up the submission of certain documents necessary to proceed with the case and, as a result, the proceedings had had to be stayed for over three years. The Government further claimed that the periods during which the proceedings had been stayed should be deducted from the overall period.

57. The applicant argued that the only difficulty in the case resulted from the fact that there had been several parties to the proceedings. The applicant claimed that the court had failed to exercise effective supervision of the experts, which had resulted in undue delays. She pointed out that the intervals between the hearings had been too long. Lastly, certain decisions to stay the proceedings had been erroneous. She recalled that the court had refused the parties' request of 12 September 1995 to resume the proceedings and that this decision had been quashed only on 15 February 1996 (see paragraph 26 above). Further, the applicant claimed that the decision of 19 September 1996 to stay the proceedings pending examination of a motion for acquisition of the land by prescription had been unsubstantiated, since this property had not constituted a part of the estate covered by the proceedings at issue.

58. The Court notes that the number of parties to the proceedings and the death of some of them obviously increased the complexity of the case, but that does not suffice to draw the conclusion that the excessive length of the proceedings can be explained by their complexity.

59. The Court further reiterates that in civil proceedings the parties too must show "due diligence" (see the *Pretto and Others* judgment of 8 December 1983, Series A no. 71, pp. 14-15, para. 33) and that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, among other authorities, *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 40; *Ciricosta and Viola v. Italy*, judgment of 4 December 1995, Series A no. 337-A, p. 10, § 28).

60. In that connection, the Court considers that the applicant did not contribute in any substantive manner to the prolongation of the proceedings.

61. As to the conduct of the authorities the Court observes that in 1990 the Minister of Justice brought the case under its administrative supervision, finding that the applicant's complaint about the length of the proceedings was justified. The Court further observes that delays in the proceedings often resulted from the slowness of the process of obtaining expert evidence.

62. The Court does not share the Government's view that all the periods during which the proceedings were stayed should be deducted from the overall length of the proceedings. It notes the applicant's argument, which the Government did not contest, that the grounds for staying the proceedings were often unsubstantiated (see paragraph 57 above). Having regard to the applicant's age, the Court cannot accept the Government's opinion that special diligence was not called for in the present case (see, *mutatis mutandis*, *Dewicka v. Poland*, no. 38670/97, § 55, 4 April 2000).

63. Lastly, the Court is of the view that the State cannot be held responsible for the period after 18 November 2005, following the parties' request to stay the proceedings. Since that date the domestic court had to abide by the parties' wish regarding the further continuation of the proceedings. Therefore, this period should not be taken into consideration.

64. Having examined all the material submitted to it and 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

65. 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

66. The applicant claimed PLN 2,032,231¹ in respect of pecuniary and non-pecuniary damage.

67. The Government contested the claim.

68. 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, the Court considers that the applicant must have suffered

¹ Approximately EUR 512,930

non-pecuniary damage. Ruling on an equitable basis and having regard to its case-law in similar cases, it awards him EUR 7,000 under that head.

B. Costs and expenses

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

C. Default interest

70. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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 7,000 (seven thousands 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;
3. *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