



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

FOURTH SECTION

CASE OF ROMEJKO v. POLAND

(Application no. 74209/01)

JUDGMENT

STRASBOURG

7 November 2006

FINAL

07/02/2007

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 Romejko 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 17 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 74209/01) 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”) on 17 January 2001 by Ms U. Romejko, the applicant.

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

3. On 13 October 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.

THE FACTS

II. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1938 and lives in Łódź.

A. The proceedings concerning the repossession of the property

1. Facts prior to 1 May 1993

5. On 14 October 1982 the applicant lodged a motion with the Piotrków Trybunalski District Court for the restitution of real property, the peaceful possession of which had been allegedly infringed by the Tuszyn Municipality.

6. At hearings held in December 1982 the court informed the applicant that the repossession claim had to be lodged within one year from the date on which possession had been infringed and requested him to lodge a claim for acquisition of the land by prescription. The initial proceedings were stayed pending the examination of this claim.

7. On 28 June 1983 the Piotrków Trybunalski District Court confirmed that the applicant had acquired title to the estate and on 3 August 1983 the applicant requested that the proceedings be resumed.

8. Upon the Tuszyn Municipality Office's claim that the land at stake had been in perpetual usufruct and hence there was no point in taking it from the current users, the District Court decided not to resume the proceedings and stayed them to allow the possibility of a friendly settlement of the case to be explored.

9. On 23 March 1987 the applicant requested the resumption of the proceedings as a settlement had not been reached.

10. On 8 April, 10 May and 7 June 1988 hearings were held.

11. On 1 July 1988 the proceedings were stayed due to the intervention of the perpetual user of the land.

12. On 17 November 1992 the applicant complained to the President of the Piotrków Trybunalski District Court that her request of 1 June 1992 to resume the proceedings had not received a response from the court. On 18 February 1993 the proceedings were resumed.

2. Facts after 1 May 1993

13. A hearing scheduled for 20 September 1993 was cancelled due to the illness of the judge.

14. On 21 October 1993 the Piotrków Trybunalski District Court declared that it lacked competence to examine the case, since the subject matter of the dispute exceeded the limit defined for district courts. It decided to transfer the case to the Piotrków Trybunalski Regional Court.

15. On 15 November 1993 the Piotrków Trybunalski Regional Court declared that it too lacked jurisdiction and returned the case to the District Court.

16. On 18 January, 28 February and 6 April 1994 the Piotrków Trybunalski District Court held hearings and heard expert opinions.

17. On 18 April 1994 the Tuszyn Municipality Office declared that it did not bear any responsibility for the acts of the State Treasury and that the competent authority to represent the Treasury in the case was the Piotrków Trybunalski District Office.

18. On 7 May 1994 the President of the Piotrków Trybunalski District Court, in reply to the applicant's administrative hierarchical complaint, found the length of the proceedings to be excessive.

19. By its decision of 11 May 1994 the Piotrków Trybunalski District Office was summoned to take part in the proceedings, but in a letter of

18 May 1994 it stated that it was not competent to take part and referred to the Tuszyn Management Board as the competent authority.

20. On 14 June 1994 the Piotrków Trybunalski District Court delivered a judgment, ordering that the estate be restored to the applicant and dismissing the remainder of her claim against the State Treasury.

21. On 25 April 1995 the Piotrków Trybunalski Regional Court dismissed the applicant's appeal.

22. On 18 September 1997 the Piotrków Trybunalski Regional Court stayed the enforcement of the judgment until the end of the proceedings concerning the transfer of ownership. The judgment was enforced after 8 February 2000, the date on which the Łódź Regional Court delivered its judgment (see paragraph 26 below).

B. The proceedings concerning the transfer of property rights

23. On 5 April 1983 the perpetual users of the land in question filed a claim against the applicant for transfer of property rights over the estate.

24. On 25 June 1997 the Łódź Regional Court allowed the claim.

25. On 27 January 1998, upon the applicant's appeal, the Łódź Court of Appeal quashed the contested judgment and remitted the case to the Regional Court for reconsideration.

26. On 8 February 2000 the Łódź Regional Court gave a judgment dismissing the claim against the applicant. On 23 November 2000 the judgment was served on her.

II. RELEVANT DOMESTIC LAW

The relevant domestic provisions and practice concerning the State's liability for a tort committed by its official have been already cited in previous cases against Poland (see i.e. *Białas v. Poland*, no. 69129/01).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE PROCEEDINGS CONCERNING THE REPOSSESSION OF PROPERTY

27. 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...”

A. Period to be taken into consideration

28. The Court notes that the proceedings for repossession of the property started on 14 October 1982, when the applicant lodged her claim with the Piotrków Trybunalski District Court, and were terminated by a judgment of 25 July 1995 enforced after 8 February 2000.

29. The Government did not address the issue of the length of the enforcement proceedings after 25 July 1995. The Court recalls that according to its established case-law, Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see the *Philis v. Greece* judgment of 27 August 1991, Series A no. 209, p. 20, § 59). However, that right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see, *mutatis mutandis*, the *Golder v. the United Kingdom* judgment of 21 February 1975, Series A no. 18, pp. 16-18, §§ 34-36). Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6; moreover, the Court has already accepted this principle in cases concerning the length of proceedings (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, §§40-45, the *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, *Reports* 1996-IV, pp. 1383-1384, §§ 20-24, and pp. 1410-1411, §§ 16-20, respectively).

30. The Court observes that the proceedings started on 14 October 1982 and were terminated after 8 February 2000. They have therefore lasted over 17 years and 4 months.

31. That being said, the period to be taken into consideration began only on 30 April 1993, when the recognition by Poland of the right of individual petition took effect, and amounted to 9 years and 10 months before two levels of jurisdiction, including the enforcement stage. 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.

32. The Court also notes that the Government in their submissions refer solely to the main set of civil proceedings concerning the repossession of the property. It will examine the applicant's complaint under Article 6 § 1 with respect to these proceedings, it being noted that the length of proceedings concerning the transfer of property rights may be taken into consideration to the extent that those proceedings contributed to the overall length of the main set of civil proceedings.

B. Admissibility

33. 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 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.

34. The applicant contested the Government's arguments.

35. 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 *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 circumstances which would lead the Court in the instant case to depart from its previous findings.

36. The Government further 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 before the entry into force of the 2004 Act, ever since the judgment of the Constitutional Court of 4 December 2001.

37. The applicant contested the Government's arguments, maintaining that, on a true interpretation, Article 417 of the Civil Code did not provide her with a basis for applying for compensation since the proceedings had been terminated before 1 September 2004, the date on which the 2004 Act came into force.

38. 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, the Court will abide by its previous findings.

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

40. 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.

C. Merits

1. The parties' submissions

41. The applicant complained about the length of the civil proceedings.

42. The Government submitted that the case had been very complex due to the fact that the courts had to rule not only on acquisition by prescription, but also on the transfer of property rights over the estate. Moreover, the domestic courts had to obtain expert opinions in order to clarify the issues raised by the case.

43. The Government further argued that the parties had contributed significantly to the length and complexity of the proceedings, in particular by rejecting the proposals for a friendly settlement of the case.

44. As regards the conduct of the public authorities, the Government were of the view that the case did not require special diligence since what was at stake for the applicant was solely of a pecuniary nature.

45. The Government further claimed that the periods during which the proceedings were stayed could not engage the responsibility of the authorities and should be deducted from the overall period. Thus, only 2 years and 2 months of the proceedings, during which the authorities displayed due diligence in dealing with the case, should be taken into consideration.

46. Furthermore, the Government took 25 April 1995 as the date of the termination of the proceedings, namely the date on which the second set of the proceedings for the transfer of property rights was terminated, without addressing the issue of the enforcement of the judgment which took effect only after 8 February 2000.

47. The applicant contested the Government's arguments and submitted that the length of the proceedings had been excessive.

2. *The Court's assessment*

48. 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; *Malinowska v. Poland*, no. 35843/97, 14 December 2000).

49. The Court can accept the Government's argument that the case was of a certain complexity, regard being had to the fact that several accompanying issues had to be determined in the different sets of the impugned proceedings. However, the Court notes that the domestic courts wasted time in trying to determine the court which had jurisdiction to try the case. In the final analysis the court initially assigned to the case was found to be the competent tribunal. Moreover, the municipal authorities at various levels declined responsibility to act in the name of the State Treasury (see paragraphs 14-15 and 17, 19 above). It follows that the domestic authorities cannot be said to have displayed due diligence in dealing with the applicant's case.

50. The Court does not share the Government's view that the period during which the proceedings were stayed should be deducted from the overall period. It is to be noted that the applicant several times requested that the proceedings be resumed and complained about the inactivity of the court in that respect to the President of the District Court (see paragraph 12 above). Moreover, the President admitted on 7 May 1994, following the applicant's complaint, that the length of the proceedings had been excessive.

51. 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).

52. 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 PROCEEDINGS CONCERNING ACQUISITION BY PRESCRIPTION

53. The applicant also complained about the length of the proceedings concerning the acquisition of the estate by prescription.

54. The Court notes that the proceedings in question ended on 28 June 1983 (see paragraph 7 above), whereas the period falling within the Court's jurisdiction *ratione temporis* began to run from 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of Article 25 of the Convention took effect.

55. It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed EUR 20,000 in respect of pecuniary and non-pecuniary damage.

58. The Government contested the claim.

59. 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 6,000 in respect of the non-pecuniary damage she must have suffered as a result of the protracted character of the proceedings.

B. Costs and expenses

60. The applicant did not claim for costs and expenses incurred either before the domestic courts or before the Court.

C. Default interest

61. 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 concerning the repossession of the property and the transfer of property rights 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 6,000 (six thousand euros) in respect of non-pecuniary damage 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 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 7 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President