



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

FOURTH SECTION

CASE OF WRÓBLEWSKA v. POLAND

(Application no. 22346/02)

JUDGMENT

STRASBOURG

28 November 2006

FINAL

28/02/2007

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 Wróblewska 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 7 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 22346/02) 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, Mrs Raisa Wróblewska (“the applicant”), on 16 November 2001.

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

3. On 6 October 2005 the Court decided to communicate the complaint concerning the length of the proceedings 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 1941 and lives in Białystok.

A. Facts prior to 1 May 1993

5. On 8 December 1989 the applicant lodged a motion for the distribution of her parents’ estate with the Białystok District Court.

6. On 27 July 1990 the court assigned an expert land surveyor to prepare an opinion on the case. His opinion was submitted on 20 August 1990.

7. On 1 October 1990 the court held a hearing which was adjourned in order to establish the assets of the estate.

8. On 7 October 1990 the court assigned an expert to establish the value of the estate. He submitted his opinion to the court on 17 December 1990.

9. The delivery of the judgment was adjourned until 20 February 1991. On that date the hearings in the case were re-opened.

10. Hearings were held on 14 May, 10 and 24 September 1991.

11. On 24 September 1991 the court admitted an opinion of an expert in building matters. On 24 October 1991 an inspection of the property was conducted. On 12 November 1991 the expert submitted his opinion.

12. On 2 December 1991 the court admitted an opinion of another expert land surveyor, which was submitted on 10 December 1991.

13. On 31 December 1991 the court delivered a decision on the distribution of the estate. The applicant appealed.

14. On 27 March 1992 the second-instance court quashed the decision and remitted it to the District Court for re-examination.

15. On 8 October 1992 the court assigned another expert land surveyor.

16. On 25 March 1993 the court assigned an expert in building matters.

B. Facts after 30 April 1993

17. The court held hearings on 1 and 15 February and 1 March 1994.

18. On 1 March 1994 the court admitted another opinion to be prepared by two experts in building matters. The opinion was submitted on 6 June 1994.

19. On 15 February 1995 the court decided to admit evidence in the form of an inspection of the property to be carried out in the presence of an expert land surveyor. The inspection was conducted on 26 May 1994. On 23 June 1995 the expert opinion was submitted to the court.

20. On 20 December 1995 the court admitted an additional opinion of an expert land surveyor and of an expert in building matters. The opinion was submitted on 21 January 1996.

21. On 29 January 1996 the court decided to admit another opinion of an expert land surveyor, which was submitted on 15 February 1996.

22. On 28 June 1996 the court assigned an expert in agriculture. His opinion was submitted on 6 September 1996.

23. On 4 April 1997 the court admitted a supplementary opinion of the expert in building matters. It was submitted on 13 May 1997.

24. A hearing on 22 September 1997 was adjourned in order to hear an expert. Another hearing was scheduled for 27 October 1997.

25. On 30 December 1997 the court decided to admit an opinion of yet another expert land surveyor to verify the previous opinion.

26. On 25 June 1998 the Białystok District Court delivered a judgment excluding the applicant from the succession. She appealed.

27. On 20 October 1998 the Białystok Regional Court dismissed the appeal.

28. On 31 May 2001 the Supreme Court refused to accept the cassation appeal for examination.

II. RELEVANT DOMESTIC LAW

29. For a detailed presentation of the relevant domestic law concerning the available remedies against excessive length of proceedings, i.e. the 2004 Act, see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005; *Barszcz v. Poland*, no. 71152/01, 30 May 2006, §§ 26-35.

THE LAW

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

30. 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...”

31. The Government contested that argument.

32. The proceedings began on 8 December 1989. 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. 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 ended on 31 May 2001, when the Supreme Court refused to accept the cassation appeal for examination. It thus lasted eight years and one month for three levels of jurisdiction.

A. 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 section 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 Government further submitted that such a possibility had existed in Polish law even 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.

35. The applicant contested the Government's arguments.

36. The Court observes that in the present case the proceedings at issue terminated on 31 May 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 for tort set out in Article 442 of the Code Civil had expired before 17 September 2004.

37. 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 *Małasiewicz 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 that the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

38. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

39. 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

40. 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; *Zynger v. Poland*, no. 66096/01, § 45, 13 July 2004).

41. 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, for instance, *Zynger*, 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.

42. The Court observes in particular that the Government, although they acknowledged that the case had not been complex, have not submitted any information whatsoever that would explain the length of the proceedings, the long intervals between the hearings or offered any explanation as to why several opinions of experts in the same field were repeatedly ordered by the court.

43. 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.

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

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

45. The applicant also complains about the unfavourable outcome of the proceedings, alleging their unfairness and bias on the part of the courts.

46. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and insofar 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).

47. In the light of all the material in its possession and insofar as the applicant’s complaint about the outcome has been substantiated, the Court finds that it does not disclose any appearance of a violation of the Convention. In particular, it finds no elements which would indicate that the national courts went beyond their proper discretion in the assessment of the facts or reached arbitrary conclusions.

48. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed PLN 50,000¹ in respect of pecuniary and non-pecuniary damage.

51. The Government contested the claim.

52. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,500 under that head.

B. Costs and expenses

53. The applicant also claimed reimbursement of the costs and expenses incurred before the domestic courts and the Court. She did not substantiate her claims.

54. The Government contested these claims.

55. 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 (see *Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, § 36). 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 applicant, who was not represented by a lawyer, the sum of EUR 100 under this head.

C. Default interest

56. 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.

¹ Approximately EUR 12,600.

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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 100 (one 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 28 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President