



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

FOURTH SECTION

CASE OF WRÓBLEWSKI v. POLAND

(Application no. 76299/01)

JUDGMENT

STRASBOURG

5 December 2006

FINAL

05/03/2007

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 Wróblewski v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr K. TRAJA,

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 14 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 76299/01) 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, Mr Sławomir Wróblewski (“the applicant”), on 12 March 2001.

2. The Polish Government (“the Government”) were represented by their Agents, firstly Mr K. Drzewicki and subsequently by Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 17 June 2003 the Court declared the application partly inadmissible and 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Warszawa.

5. The facts of the case, as submitted by the applicant, may be summarised as follows.

6. On 9 November 1993 the applicant filed a petition for divorce with the Warsaw Regional Court requesting that a no-fault divorce be granted.

7. On 9 January 1994 the court held a reconciliation meeting, but the parties could not reach an agreement.

8. On 8 February 1994 the applicant's wife requested the court to award child maintenance against the applicant.

9. On 28 March 1994 the Warsaw Regional Court held the first hearing in the case. The applicant modified his claim and requested that the divorce be based on the fault of both parties.

10. On 15 April 1994 the Warsaw Regional Court, by way of an interim order, ruled on the amount of child maintenance to be paid to the applicant's daughter, born in 1981.

11. On 9 May 1994 a hearing was held. On the same date the Warsaw Regional Court issued an interim order determining the manner in which the applicant and his wife should use their house pending a judgment in the case.

12. At the hearing of 27 June 1994 the Warsaw Regional Court heard witnesses.

On 8 July 1994 the applicant's lawyer filed pleadings in which he requested the Warsaw Regional Court to admit evidence from a court expert in sexology in order to establish the cause of the breakdown of the marriage. He also requested that the applicant's medical records concerning his treatment for sexual problems be admitted as evidence. Apparently these requests were dismissed.

13. On 11 July 1994 the applicant modified his claim and requested that his wife be declared solely responsible for the breakdown of the marriage.

14. A hearing was held on 22 August 1994.

15. By another interim order of 30 August 1994, the Warsaw Regional Court prohibited the applicant from introducing third persons into his house and registering them there as residents. This decision was taken after the applicant's new partner and mother of his two children (born in 1990 and 1994 respectively) had moved in. The court refused the applicant's request for a reduction of child maintenance.

16. On 10 September 1994 the applicant appealed against the decision of 30 August 1994.

17. On 21 November 1994 the applicant requested an amendment of the decision concerning child maintenance.

18. On 29 December 1994 the Warsaw Court of Appeal amended the decision of 30 August 1994 finding that the applicant could not be prevented from registering as residents his own children and their mother. On the same date the Court of Appeal dismissed the applicant's request concerning the amount of maintenance.

19. A hearing scheduled for 19 June 1995 was adjourned due to the respondent's illness.

20. On 20 November 1995 the court held a hearing. The respondent requested an increase of the child maintenance award. The court requested the parties to submit information on their financial situation.

21. On 5 December 1995 the Warsaw Regional Court increased the amount of maintenance payable to the applicant's eldest daughter. Both parties appealed.

22. On 29 February 1996 the applicant requested the court to supplement the minutes of the hearing of 20 November 1995. His request was refused by the presiding judge as it had been lodged out of time. The applicant's renewed request of 14 March 1996 was dismissed on 7 May 1996.

23. On 25 July 1996 the Warsaw Court of Appeal increased the amount of child maintenance.

24. At the hearing of 13 January 1997 the Warsaw Regional Court heard a witness. The applicant's attorney renewed his request (filed previously in pleadings dated 8 July 1994 and 8 January 1997) to appoint a court expert in sexology. The court decided to admit evidence from experts in sexology and from experts attached to the Family Diagnostic and Consultation Centre (*Rodzinny Ośrodek Diagnostyczno-Konsultacyjny*). On the same day the court decided to request the applicant's doctor A.S.K. for the medical records on his past treatment for sexual problems.

25. The expert of the Family Diagnostic and Consultation Centre submitted his opinion on 5 September 1997. The expert in sexology M.U. submitted his reports concerning the respondent and the applicant on 27 November 1997 and 13 March 1998 respectively.

26. Between 28 May 1997 and 16 January 1998 the court took steps to retrieve the applicant's medical records which had been lost following the death of the applicant's doctor A.S.K.

27. On 8 December 1997 the respondent's lawyer requested the court not to schedule hearings between 19 February 1998 and 19 March 1998 because she would be on leave on those dates.

28. At the hearing of 23 March 1998 the parties commented on the experts' reports. The applicant challenged the competence of the expert M.U. and requested new expert opinions to be commissioned. The court requested M.U. to submit a supplementary report. The respondent requested that the award of maintenance be increased.

29. On 6 April 1998 the court increased the amount of child maintenance.

30. On 8 April 1998 the court decided to appoint another expert in sexology. He submitted his opinion on 8 December 1998.

31. The hearing scheduled for 24 February 1999 was adjourned due to the judge's illness.

32. The last hearing before the first-instance court was held on 12 May 1999. The parties presented their final submissions. The respondent for the

first time consented to the divorce but demanded that the applicant be declared responsible for the breakdown of the marriage.

33. The Warsaw Regional Court delivered its judgment on 26 May 1999, finding both parties at fault for the breakdown of the marriage. It further awarded the custody of their daughter to both parties and established her place of residence at her mother's address. It also fixed a new amount of child maintenance to be paid by the applicant.

Both parties appealed against the judgment.

34. On 18 October 1999 the applicant requested rectification of the minutes of several hearings held before the first-instance court. On 2 November 1999 the presiding judge refused his request as having been lodged out of time.

35. On 20 December 1999 the applicant appealed against this decision. On 17 January 2000 the presiding judge refused to entertain the applicant's appeal. The applicant's further appeal of 1 March 2000 was rejected on 7 March 2000, the court finding that no appeal lay against this decision. The applicant's further appeal was dismissed by the Warsaw Court of Appeal on 8 August 2000.

36. On 8 August 2000 the Warsaw Court of Appeal dismissed the parties' appeals against the judgment of 26 May 1999 and quashed *ex-officio* rulings in respect of the child who had in the meantime reached the age of majority. The judgment became final on 8 December 2000.

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 period to be taken into consideration began on 9 November 1993 and ended on 8 December 2000, when the judgment of 8 August 2000 became final. It thus lasted 7 years and 1 month for two levels of jurisdiction.

A. Admissibility

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.

B. Merits

41. The Government submitted that the case had been complex. The authorities had shown due diligence in the proceedings. The courts had obtained numerous expert reports and heard several witnesses. According to the Government, the applicant had contributed to the prolongation of the proceedings by lodging appeals against decisions on maintenance, requesting that expert evidence be taken and requesting rectification of the court minutes. Lastly, they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

42. The applicant contested those arguments. In particular, he claimed that there had been significant periods of inactivity between the hearings. He also argued that the nature of the examinations conducted by the experts in sexology had been neither complex nor time-consuming, as they had only lasted some several minutes or a maximum of three hours. Therefore, there had been no justification for the long delays in submitting their reports to the court. Further, there had only been a few witnesses in the case and most of them had been heard by the court during the first months of the proceedings.

43. 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). 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).

44. Having regard to the fact that the case concerned the applicant's civil status the Court first observes that it required special diligence on the part of the domestic authorities.

45. The Court observes that the case was examined in the first-instance court from 1993 to 1999 and there were delays in the proceedings, in particular during the following periods: from January to November 1995

and from December 1995 to July 1996. From January 1997 to March 1998 the court awaited a report from an expert in sexology and did not take any steps to urge the appointed expert to expedite the preparation of the report. From April to December 1998 the court waited for the report of the newly-appointed expert. It should also be noted that two years and six months elapsed between the applicant's request to appoint an expert and the court's decision to appoint one.

46. The Court does not accept the Government's submissions that the case was very complex. It is true that divorce proceedings may often involve additional legal issues that may require the adoption of interim decisions such as on maintenance. However, in the present case the interim decisions concerning child maintenance were delivered speedily and did not influence the overall length of the proceedings.

47. The Court notes that the applicant, at the later stage of the proceedings, repeatedly requested the court to rectify the minutes of hearings and filed appeals against various interim decisions. He has not, however, contributed substantially to the total length of the proceedings, especially during the period when the case was pending before the first-instance court.

48. Having regard to its case-law on the subject, the Court considers that 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

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 3,894 in respect of pecuniary damage and EUR 300,000 in respect of non-pecuniary damage.

51. The Government contested these claims.

52. 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 sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head.

B. Costs and expenses

53. The applicant also claimed PLN 7,247 for the costs and expenses incurred before the domestic courts.

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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicant, who was not represented by a lawyer before the Court, the sum of EUR 100 for the proceedings before the Court.

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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of 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, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, to be converted into zlotys at the rate applicable on the date of payment, 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 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President