



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

FOURTH SECTION

CASE OF TROJAŃCZYK v. POLAND

(Application no. 11219/02)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 28 April 2009*

STRASBOURG

9 January 2007

FINAL

09/04/2007

*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 Trojańczyk v. Poland,

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

Sir Nicolas BRATZA, President,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, judges,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 5 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 11219/02) against the Republic of Poland lodged with the Court on 16 July 2001 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ms B. Trojańczyk, the applicant.

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

3. On 14 February 2006 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 1951 and lives in Warszawa.

5. On 23 June 1993 the applicant lodged a petition for divorce with the Warsaw Regional Court.

6. On 14 December 1993 the Warsaw Regional Court decided to secure the payment of the applicant’s maintenance claims on the property of the applicant’s husband pending the outcome of the divorce proceedings. On 25 August 1995 it changed its previous decision on the issue of security for the payment of the maintenance claims. The defendant, the applicant’s

husband, appealed. On 14 February 1996 the Warsaw Court of Appeal dismissed the appeal.

Hearings before the Regional Court were held on 4 November and 14 December 1993, 6 January, 15 February and 25 April 1994, 28 April, 2 August and 25 August 1995, 5 March 1997, 28 January, 7 April and 16 June 1999.

On 17 January 2001 the Warsaw Regional Court gave a judgment ruling on the divorce petition. The applicant was served with it on 12 March 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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, for example, *Rybczyński v. Poland*, no. 3501/02, and *Białas v. Poland*, no. 69129/01).

THE LAW

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

7. 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..."

8. The Government contested that argument.

9. The Court observes that the proceedings started on 23 June 1993, when the applicant lodged her petition for divorce, and were terminated by the Warsaw Regional Court judgment of 17 January 2001. They therefore lasted 7 years and 6 months for one level of jurisdiction.

A. Admissibility

1. Exhaustion of domestic remedies

10. 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.

11. 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 to depart from its previous findings.

12. 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 even before the entry into force of the 2004 Act, namely since the judgment of the Constitutional Court of 4 December 2001.

13. 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.

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

2. Compliance with the six-month time-limit

15. The Government maintained that the application had been lodged outside the six-month time-limit. They observed that the final judgment of the domestic court was given on 17 January 2001 and, consequently, the application should have been lodged until 17 July 2001 at the latest.

In the Government's opinion, when examining whether the six-month rule had been observed, the date of arrival of the correspondence at the Court should be taken into consideration. They pointed out that the application form reached the Court on 26 July 2001, that is nine days after the six-month period had passed and that they found no proof that the letter had actually been sent before the expiry of the six-month period. In particular the Government strongly opposed the acceptance of the date of 16 July 2001, which had been written by the applicant next to her signature

on the application form, as the date on which the application had been lodged. They argued that the applicant could have chosen this date arbitrarily.

16. The Court recalls that the purpose of the six-month rule is to promote security of the law, to ensure that cases raising Convention issues are dealt with within a reasonable time and to protect the authorities and other persons concerned from being under uncertainty for a prolonged period of time (see, among many other authorities, *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004).

The date of the introduction of an application is the date of the first letter indicating an intention to lodge an application and giving some indication of the nature of the application (*Chalkley v. the United Kingdom* (dec.), no. 63831/00, 26 September 2002). In the present case, the Court considers that there are no compelling reasons why the date of signature on the application form, namely 16 July 2001, should not be accepted as the date of lodging of the application. It is to be observed that the applicant posted her application to the Court on that very same day, as is confirmed by the date of the stamp on the envelope.

It follows that the application was lodged within the prescribed time-limit.

17. The Court notes that the application 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

18. The Government admitted that the proceedings were not complex and the applicant had not contributed to their length. Nevertheless, they were of the opinion that the judicial authorities had shown adequate diligence in ensuring the proper course of the proceedings at issue.

19. The Court recalls that the period to be taken into consideration amounted to 7 years and 6 months for one level of jurisdiction

20. 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). 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).

21. 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). 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. It notes in particular that the proceedings related to the applicant's civil status, and thus required special diligence. However, in 1997 only one hearing was held and no hearings were held in 1996 and 1998. It has not been disputed that the case was not complex and that no delays could be attributed to the applicant.

22. 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

23. 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."

24. The applicant, who did not claim costs and expenses, left the amount of just satisfaction to be awarded to the Court's discretion. The Government argued that the amount should not exceed 10,000 PLN (2,500 EUR) which is the maximum compensation granted under the provisions of the 2004 Act on complaints about a breach of the right to a trial within reasonable time.

25. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis and having regard to its established case-law, the Court awards her EUR 5,400 under that head.

26. 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, EUR 5,400 (five thousand four hundred 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.

Done in English, and notified in writing on 9 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President