



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

FOURTH SECTION

CASE OF RAFIŃSKA v. POLAND

(Application no. 13146/02)

JUDGMENT

STRASBOURG

3 July 2007

FINAL

03/10/2007

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 Rafińska 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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 12 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 13146/02) 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, Ms Janina Rafińska ("the applicant"), on 1 December 2001.

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

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

4. On 20 June 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of proceedings. 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

5. The applicant, Ms Janina Rafińska, is a Polish national, who was born in 1937 and lives in Ostrowite.

6. The applicant and her husband divorced. On 8 July 1994 L. R. (the applicant's husband) lodged a motion with the Rypin District Court for the division of their marital property. He further asked the court to exempt him from court fees.

7. On 29 July 1994 the court decided to examine the case together with a case concerning the dissolution of the co-ownership of a farm belonging to the applicant, L. R., K. R. (their son) and K. K. Subsequently, on 8 March 1999 the court decided to examine in separate proceedings the case concerning the division of the marital property.

8. On 7 April 1999 the first hearing in the case was scheduled for 27 April 1999. On the latter date the hearing was adjourned and the parties were requested to submit their requests regarding the evidence to be taken.

9. On 30 April 1999 the applicant challenged a judge sitting in the case. The challenge was dismissed on 8 June 1999.

10. The hearing that was to be held on 14 October 1999 was adjourned and the parties were obliged to submit again their requests as to the evidence to be taken.

11. On 14 October 1999 the following hearing was scheduled for 27 January 2000. However, on the latter date the hearing was adjourned until 17 February 2000 in order to hear the testimonies of the parties. During the court's hearing of 17 January 2000, the parties were heard. None of them submitted any additional requests for evidence to be taken. The proceedings were completed and the judgment was scheduled to be delivered on 2 March 2000.

12. However, on 2 March 2000 the trial was resumed and the hearing was adjourned until 21 March 2000 in order to admit additional witness evidence. On 21 March 2000 the parties were heard and the trial was terminated. The court decided to deliver the judgment on 4 April 2000. However, on the latter date the trial was resumed once again in order to admit an opinion of an expert on the composition of the property. On 6 April 2000 the applicant appealed against the decision to admit the expert's opinion. This appeal was dismissed on 10 May 2000.

13. On 8 August 2000 the expert submitted his opinion to the court.

14. On 19 December 2000 the court admitted the opinion and the parties' observations on it.

15. On 5 January 2001 the Rypin District Court delivered its judgment on the division of the property.

16. On 8 March 2001 the applicant lodged an appeal against the judgment. The court requested her to pay court fees.

17. On 6 April 2001 the applicant requested the court to exempt her from court fees. Her motion was allowed on 10 May 2001.

18. On 10 May 2001 the Włocławek Regional Court dismissed the appeal.

II. RELEVANT DOMESTIC LAW

19. 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

20. 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 8 July 1994 and ended on 10 May 2001, when the final judgment in the case was delivered. It thus lasted 6 years and 10 months for two levels of jurisdiction.

A. Admissibility

23. 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.

24. The Government further submitted that such a possibility had existed in Polish law even before the entry into force of the 2004 Act since the judgment of the Constitutional Court of 4 December 2001, which entered into force on 18 December 2001.

25. The applicant contested the Government's arguments.

26. The Court observes that in the present case the proceedings at issue were terminated on 10 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 in tort set out in Article 442 of the Code Civil had expired before 17 September 2004.

27. 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 *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.

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

29. The Court thus 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

30. 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).

31. 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.

32. 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 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed PLN 150,000¹ without specifying whether this amount related to pecuniary or non-pecuniary damage.

35. The Government contested the claim, stating that the amount was exorbitant.

36. The Court does not discern any causal link between the violation found and any pecuniary damage which may have been 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 3,600 under that head.

B. Costs and expenses

37. The applicant also claimed reimbursement of the allegedly high costs and expenses she incurred before the domestic courts. She did not substantiate her claims.

38. The Government contested this statement and submitted that only those costs actually incurred in the preparation and defence of the applicant's case before the European Court, and not before the domestic courts, can be taken into consideration.

39. 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, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

40. 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 38,000

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 3,600 (three thousand six 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 3 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President