



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

FOURTH SECTION

CASE OF KREMPA-CZUCHRYTA v. POLAND

(Application no. 11184/03)

JUDGMENT

STRASBOURG

3 July 2007

FINAL

10/12/2007

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 Krempa-Czuchryta v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *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. 11184/03) 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 Ewa Krempa-Czuchryta (“the applicant”), on 10 September 2001.

2. The applicant was not legally represented. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 26 June 2006 the President of the Fourth Section decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it was 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 1968 and lives in Lublin.

A. Facts prior to 1 May 1993

5. On 2 May 1990 the applicant asked the Rzeszów District Court to declare that she had been the beneficiary of an inheritance from a certain M.K. on the basis of a will made before a notary on 24 February 1975.

6. On 27 September 1990 the other party to the proceedings, a certain W.B., lodged her own inheritance claim and asked the same court to declare that she had received an inheritance from her sister – M.K. – on the basis of the above-mentioned will made before a notary on 21 November 1988.

7. On 12 November 1990 a hearing was held. The applicant asked for the annulment of a will made on 21 November 1988 in favour W.B.

8. On 15 March 1991 a psychiatric opinion (*opinia sądowo-psychiatryczna*) concerning the testator's state of health between 1975 and 1988 was obtained.

9. At hearings scheduled between 1 October 1992 and 1 February 1993 evidence was heard from over 20 witnesses.

B. Facts after 30 April 1993

10. On 29 October 1994 the court obtained a second psychiatric opinion prepared by an expert from the Lublin Medical Academy (*Akademia Medyczna*).

11. On 10 February 1995 the Rzeszów District Court asked the Poznań Medical Academy for an expert report to be prepared by the Institute of Psychiatry – the so-called “institute opinion” (*opinia instytucjonalna*).

12. On 20 April 1995 the Poznań Medical Academy informed the Rzeszów District Court about the state of preparation of the report.

13. On 10 July 1995 the Poznań Medical Academy informed the Rzeszów District Court that, due to the holiday season, it was not possible to prepare the above-mentioned “institute opinion”. It asked the Rzeszów District Court whether it would accept an expert opinion given by two experts in psychiatry.

14. On 21 July 1995 the President of the Rzeszów District Court agreed.

15. The opinion was submitted on 8 May 1996.

16. The fourth expert's report in the case was submitted on 24 September 1997.

17. At a hearing held on 23 December 1997 the Rzeszów District Court gave a decision. It was served on the applicant's lawyer on 27 January 1998.

18. On 24 February 1998 the applicant appealed.

19. The appeal was dismissed by the Rzeszów Regional Court on 12 May 1998. The decision was served on the applicant on 15 June 1998.

20. On 14 July 1998 the applicant's lawyer lodged a cassation appeal. It was referred to the Supreme Court on 29 October 1998.

21. On 13 March 2001 the Supreme Court refused to entertain the cassation appeal as no important legal issue arose in the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

23. The applicant first complained that the proceedings in her case had been unfair. In particular, she alleged that the domestic courts had incorrectly assessed the evidence. She alleged a breach of Article 6 § 1 of the Convention, which, in its relevant part, reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

24. However, 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 to 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 in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

25. In the present case the applicant did not allege any particular failure to respect her right to a fair hearing on the part of the relevant courts. Indeed, her complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

26. 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...”

27. The Government contested that argument.

28. The Court notes that the proceedings commenced on 2 May 1990. 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. Nevertheless, 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 13 March 2001. It thus lasted 7 years, 10 months and 14 days at three court instances.

A. Admissibility

29. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies available to him under Polish law, as required by Article 35 § 1 of the Convention. They maintained that from 17 September 2004, the date of entry into force of the 2004 Act, the applicant had a possibility of seeking compensation for the damage resulting from the excessive length of proceedings before Polish courts, under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code.

30. However, the Court has already held that the civil action relied on by the Government cannot be regarded as an effective remedy with a sufficient degree of certainty in cases where the three-year limitation period for the State's liability in tort expired before the entry into force of the 2004 Act on 17 September 2004 (see *Ratajczyk v. Poland*, cited above; and *Barszcz v. Poland*, no. 71152/01, § 45, 30 May 2006). The present case belongs to this group of applications as the proceedings at issue ended on 13 March 2001, which is more than three years before the 2004 Act had come into force. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

31. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. 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).

33. 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).

34. 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. In particular the Court notes that there was an approximately 33-month period of inactivity in the proceedings before the Supreme Court between the date of referring the applicant's cassation appeal and the delivery of the judgment. The Court observes that, in the face of increasing pressure at the material time on the Supreme Court's case-processing capacity, the authorities subsequently took the necessary remedial action in order to deal with this problem (see *Kępa v. Poland* (dec.), no. 43978/98, 30 September 2003). That being said, in the present case the applicant's cassation appeal lay dormant in the Supreme Court for nearly 33 months, which constitutes an unreasonable delay (see *Domańska v. Poland*, no. 74073/01, § 32, 25 May 2004).

35. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 255,186 Polish zlotys (PLN) in respect of pecuniary damage and PLN 50,000 for non-pecuniary damage.

38. The Government contested these claims.

39. 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 2,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed PLN 3,350 for the costs and expenses incurred before the domestic courts and PLN 424,86 for those incurred before the Court.

41. The Government contested these claims.

42. 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. 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 to the applicant, who was not represented by a lawyer, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

43. 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 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, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement:

- (i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
- (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