



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

FOURTH SECTION

CASE OF KARPOW v. POLAND

(Application no. 3429/03)

JUDGMENT

STRASBOURG

26 February 2008

FINAL

01/12/2008

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 Karpow v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 3429/03) 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, Mr Stanisław Karpow (“the applicant”), on 6 November 2001.

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

3. On 8 January 2007 the President of the Fourth Section of the Court decided to give notice of the application 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 1935 and lives in Warsaw.

A. Proceedings for divorce

5. On 25 March 1987 the applicant filed for a no-fault divorce.

6. On 22 April 1987 the Warsaw District Court (*Sąd Rejonowy*) held a reconciliation session with the participation of the applicant and his wife.

7. On 11 May 1987 the applicant modified his petition and requested that the divorce be granted on the grounds of his wife's fault.

8. The Warsaw District Court held two more reconciliation sessions. On 30 December 1987 it decided on the applicant's contact rights with his minor child.

9. On 8 March 1988 the Warsaw District Court ordered the applicant to undergo a psychiatric observation.

10. Forty-five hearings were scheduled between November 1988 and March 1997. However, twenty-four of them were adjourned and one was cancelled. Two hearings were adjourned due to the applicant's stay in a psychiatric hospital for observation. Two hearings were adjourned in connection with the examination of the applicant's challenge to the impartiality of the presiding judge. One hearing was adjourned at the parties' request. One hearing was adjourned because the applicant's wife was abroad. Eighteen hearings were adjourned due to the absence of one of the parties. Finally, one hearing was cancelled since the presiding judge was ill.

11. On 16 May 1990 the Warsaw District Court issued an order determining the use of the matrimonial home and payment of child maintenance.

12. On 7 June 1993 the court referred the spouses for counselling at the Family Diagnostic and Consultation Centre (*Rodzinny Ośrodek Diagnostyczno-Konsultacyjny*).

13. On 26 March 1997 the Warsaw District Court granted a divorce on the ground of the fault of both spouses. The court also ruled on custody rights and child maintenance. The applicant appealed.

14. On 6 November 1997 the Warsaw Regional Court (*Sąd Okręgowy*) quashed the first-instance judgment and remitted the case to the District Court.

15. Following amendments to the applicable law, the Regional Court assumed jurisdiction to examine the case. The total number of hearings held in the renewed proceedings has not been specified by the applicant. It appears that the applicant lodged two challenges to the impartiality of a judge. They were dismissed by the Warsaw Regional Court on 10 and 25 September 2002 respectively.

16. On 29 January 2004 the Warsaw Regional Court granted a divorce on the ground of the fault of both spouses. The applicant appealed.

17. On an unspecified date the applicant asked for an exemption from court fees in the appeal proceedings. On 23 April 2004 the Warsaw Regional Court refused his request. On 9 June 2004 the applicant lodged an interlocutory appeal against that decision and asked for a full or partial exemption from court fees. It appears that the applicant was asked to complete his appeal and that, ultimately, he was granted the exemption sought.

18. On 9 February 2006 the Warsaw Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's appeal against the first-instance judgment.

B. Proceedings under the 2004 Act

19. On 14 March 2005 the applicant complained about the length of the proceedings under the Act of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act").

20. On 12 May 2005 the Warsaw Court of Appeal dismissed the complaint. The court held that the 2004 Act did not have retroactive effect and, consequently, it examined the applicant's claim only in respect of the period between the date of entry into force of the 2004 Act (17 September 2004) and the date on which the applicant filed the complaint (14 March 2005). The Warsaw Court of Appeal found that the impugned proceedings were progressing without any undue delays. It was noted that on 29 January 2004 the Warsaw Regional Court had delivered a judgment and that the case was pending on appeal. It was emphasised that any delay in the appeal proceedings was attributable to the applicant who had twice applied for an exemption from court fees on the basis of incomplete information.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. 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

22. 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..."

23. The Government contested that argument.

24. The Court notes that the proceedings commenced on 25 March 1987. However, the period to be taken into consideration only began 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 9 February 2006. It thus lasted twelve years and nine months at three levels of jurisdiction.

A. Admissibility

25. 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

26. 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 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 (see *Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

27. 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). Furthermore, the Court considers that, in dismissing the applicant's complaint that the proceedings in his case had exceeded a reasonable time, the Warsaw Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

28. 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. 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

29. 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

30. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government submitted that the claim was excessive.

32. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 7,000 under that head.

B. Costs and expenses

33. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court and EUR 8,000 for those incurred before the domestic courts.

34. The Government contested these claims.

35. 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 are 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 the applicant, who was unrepresented, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

36. 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 7,000 (seven thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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 26 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President