



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

FOURTH SECTION

CASE OF MAJCHER v. POLAND

(Application no. 12193/02)

JUDGMENT

STRASBOURG

8 April 2008

FINAL

29/09/2008

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 Majcher v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (nos. 12193/02) 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, Mr Józef Majcher (“the applicant”), on 15 October 2001.

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

3. On 30 November 2006 the President of the Fourth Section 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 1934 and lives in Rzeszów.

A. Judicial proceedings

1. Facts before 1 May 1993

5. In 1987 the applicant's wife filed a petition for divorce. The divorce was granted shortly afterwards.

6. On 24 November 1987 the applicant lodged a claim for the division of matrimonial property with the Łańcut District Court (*Sąd Rejonowy*).

7. On 31 December 1988 the Łańcut District Court gave a decision and divided the property.

8. On an unspecified date the applicant appealed.

9. On 7 November 1989 the Rzeszów Regional Court (*Sąd Okręgowy*) remitted the case.

2. Facts after 1 May 1993

10. On 10 March 1998 the Łańcut District Court again gave a decision.

11. On unspecified dates both parties appealed.

12. On 11 September 1998 the Rzeszów Regional Court dismissed both appeals.

13. On 23 October 1998 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

14. On 14 May 2001 the Supreme Court refused to hear the applicant's cassation appeal.

15. The applicant submitted that as a consequence of the prolonged proceedings in his case he had been deprived of his property and had to live in a Welfare Home (*Dom Pomocy Społecznej*).

B. Enforcement proceedings

16. On an unspecified date the applicant instituted enforcement proceedings against his wife who apparently had failed to comply with the final decision on the division of their property.

17. On 6 May 1999 the Łańcut Bailiff informed the applicant that the enforcement had proved ineffective.

18. On 10 May 1999 the applicant lodged a complaint with the Łańcut District Court against the actions taken by the bailiff (*skarga na czynności komornika*). He submitted that those actions had been incorrect, because the money obtained from the debtor had been distributed wrongly. He also complained about the ineffectiveness of the enforcement.

19. On 21 July 1999 the Łańcut District Court dismissed his complaint. It held that the order of distribution had been in accordance with the Code of Civil Procedure. As regards the ineffectiveness of the enforcement, the court

held that no valuable objects had been found in the debtor's house which could be sold and used to satisfy the debt.

20. On an unspecified date the applicant appealed.

21. On 21 July 1999 the Rzeszów Regional Court dismissed his appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. The legal provisions applicable before the entry into force of the 2004 Act as well as matters of practice concerning the remedies against unreasonable length of proceedings are set out in paragraphs 26-35 of the judgment delivered by the Court on 30 May 2006 in the case of *Barszcz v. Poland* no. 71152/01.

23. 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; *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

24. The applicant first complained that the proceedings in his case were unfair. He 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...”

25. 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.

26. In the present case the applicant did not allege any particular failure to respect his right to a fair hearing on the part of the relevant courts. Indeed, his 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

27. 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...”

28. The Government contested that argument.

29. The Court notes that the proceedings commenced on 24 November 1987. 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 14 May 2001. It thus lasted eight years and fifteen days at three court instances.

A. Admissibility

30. 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.

The Government further submitted that such a possibility had existed in Polish law even in relation to those proceedings which had terminated earlier than three years before the entry into force of the 2004 Act.

31. 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

14 May 2001, which is more than three years before the 2004 Act had come into force. The Court further considers, having examined the material submitted to it, that no evidence of judicial practice of the Supreme Court or at least of the appellate courts has been provided to show that the claim for compensation for unreasonable length of the proceedings could be successful when the proceedings complained of have come to an end more than three years prior to 17 September 2004 (see *Chyb v. Poland*, no. 20838/02, § 32, 22 August 2006).

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

32. 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

33. 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).

34. 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).

35. 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 the overall, unacceptable length of the proceedings resulted from the conduct of the District Court and the Supreme Court, which had been examining the applicant's claim and cassation appeal for almost five years (taking into consideration the period which falls under the Court's jurisdiction *ratione temporis*) and thirty-one months respectively. The Court agrees that some delays in the procedure before the Supreme Court could be explained by the fact that, during the material time the Supreme Court had to deal with an increased workload and that subsequently the authorities had taken remedial actions (see *Kepa v. Poland* (dec), no. 43978/98, 30 September 2003). Nevertheless, in the present case, the applicant's cassation appeal lay dormant in the Supreme Court for thirty-one months, which constitutes an unreasonable delay.

36. The Court is of the view that what was at stake for the applicant in the domestic litigation was of some importance for him (see § 15 above).

37. The Court considers that, in the particular circumstances of the instant case, a period of eight years and fifteen days exceeds a reasonable time.

There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. The applicant, relying on Articles 8, 10, 13 and 14 of the Convention as well as Article 1 of Protocol No. 1 to the Convention, complained, in essence, that as a result of the proceedings in his case he became a homeless person, that his appeal and cassation appeal had been dismissed, that he had been discriminated against and that he had been deprived of his property due to the actions of the domestic courts. He also appeared to complain about the ineffectiveness of the enforcement proceedings against his former wife.

39. The Court, having examined this complaint, and regardless of other possible grounds of inadmissibility, finds nothing in the case file which might disclose any appearance of a violation of this Convention provision.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicants claimed 101,700 euros (EUR) in respect of pecuniary damage and EUR 16,000 in respect of non-pecuniary damage.

43. The Government contested these claims.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head.

B. Costs and expenses

45. The applicant did not make any claim for costs and expenses.

C. Default interest

46. 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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of the 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President