



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

FOURTH SECTION

CASE OF BIENKOWSKA v. POLAND

(Application no. 13282/04)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

17/10/2008

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 Bieńkowska 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 24 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 13282/04) 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 Grażyna Bieńkowska (“the applicant”), on 17 March 2004.

2. The applicant was represented by Mr K. Uczkiewicz, a lawyer practising in Wrocław. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. On 11 September 2006 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 1954 and lives in Wrocław.

A. Main proceedings (civil proceedings for acquisition of inheritance)

5. On an unspecified date the applicant’s father J.R. married M.K., his second wife. On 22 December 1994 they made a will before a notary,

appointing each other sole beneficiaries of their wills. They both had children from their previous marriages.

6. On 21 March 1995 M.K. died. On 7 September 1995 her daughter K.C. applied for a declaration of acquisition of M.K.'s estate on the basis of a handwritten will made on 7 May 1990 by K.C. in the name of her mother. J.R. requested a declaration of acquisition of the estate on the basis of the will made in 1994.

7. On 19 February 1996 J.R. died. On 7 April 1997 the Radom District Court declared that his four children had acquired his estate.

8. The proceedings concerning the estate of M.K, carried out by the Radom District Court, were stayed because of J.R.'s death and later resumed on 8 September 1997 with the participation of his heirs. The will of 1990 proved to be null and void because it had not been made by the testator herself. Since some of the participants disputed the validity of the will of 1994, the court appointed an expert in psychiatry, who submitted his opinion over two months later.

9. On 29 September 1998 the Radom District Court allowed a request of a party to appoint an expert in neurology.

10. On 27 November 1998 a witness failed to appear in court; he was fined and heard by the court on 23 December 1998. At the same hearing the court appointed an expert in neurology, who submitted his opinion a month later.

11. On 28 May 1999 the court heard the expert witness and the parties. The applicant requested that three parties be examined by courts at their places of domicile – in Wrocław, Kamienna Góra and Zawiercie. The last testimony taken this way was delivered to the Radom District Court in November 1999.

12. On 28 October 1999 the applicant requested the court to admit as evidence an opinion to be prepared by the Institute of Psychiatry of the Jagiellonian University in Kraków.

13. The Institute in Kraków, after an exchange of correspondence with the court, refused to prepare the expert opinion. The request to issue an opinion in the case was subsequently addressed to the Medical Academy Institute in Wrocław. The Institute also refused to accept the assignment, but it was eventually obliged to do so by the court on 20 June 2000.

14. The opinion issued by the Institute was subsequently challenged by the party K.C. Following her request the court decided to examine the experts with the judicial assistance of the District Court in Wrocław. Their testimonies were submitted on 3 April 2001.

15. K.C. requested the court to admit further evidence from experts in psychiatry and graphology. The court allowed the requests on 9 September 2001. On 1 October 2001 it requested the Institute of Psychiatry in Warsaw to prepare an opinion in the case. On 5 November 2001 the Institute informed the court that it would not be able to prepare it before June 2002. The court accepted this date.

16. On 14 February 2002 the Institute informed the court that it would not be able to issue the opinion before December 2002 or even later. On 20 February 2002 the court notified K.C., but not the other parties, of this situation. On 8 April K.C. accepted this new date.

17. On 7 November 2002 the court admitted K.C.'s request to examine the relations between J.R. and his children.

18. On 9 January 2003 the Institute finally submitted the opinion.

19. A hearing scheduled for 11 March 2003 was adjourned as K.C. had informed the court on the same day that she was ill. Hearings scheduled for 28 April, 28 May and 19 August 2003 were adjourned at the requests of K.C.'s lawyer, which were made to the court shortly before the hearings. K.C. informed the court that she intended to change her lawyer.

20. Her new lawyer requested that the psychiatric opinion of the Warsaw Institute be supplemented by adding details of the testator's stay in a hospital, in the orthopaedics department. The court ordered K.C. to pay the relevant fee and adjourned the case. After an exchange of correspondence which continued until 6 February 2004, the hospital informed the court that M.K. had never been a patient there.

21. On 23 September 2003 the applicant's lawyer requested an opinion of an expert in graphology on the 1990 will. The court admitted the motion and requested the applicant to pay the relevant fee. The applicant failed to pay, maintaining that this evidence was irrelevant for her and for the case since it had already been established that the will was null and void.

22. On 6 February 2004 K.C. informed the court that her lawyer had been suspended from practice. She requested an adjournment of the hearing to enable her to appoint a new lawyer. She also requested that an expert be appointed to compare signatures on the wills, in particular the signature on the notarial will.

23. On 14 April 2004 the court decided not to allow the expert evidence requested by K.C. since she had not paid the relevant fee.

24. The hearing scheduled for 4 June 2004 was adjourned as K.C.'s new lawyer was ill.

25. On 13 August 2004 the court quashed its decision to request a supplementary medical opinion.

26. On 6 September 2004, at K.C.'s request, the court quashed its decision of 14 April 2004 and appointed an expert in graphology.

27. A hearing was held on 11 January 2005.

28. On 10 February 2005 an expert in graphology submitted her opinion.

29. A hearing was held on 29 March 2005. The court refused - following the applicant's objection - another request by K.C. for new evidence to be taken.

30. On 12 April 2005 the Radom District Court delivered a decision by which it declared that M.K.'s estate had been acquired by the applicant's father J.R. on the basis of the 1994 will.

31. The applicant requested written grounds for this decision, which were served on her on 13 June 2005. The proceedings were terminated.

B. Proceedings under the 2004 Act

32. On 6 September 2004 the applicant lodged a complaint under the 2004 Law 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”), alleging excessive length of proceedings.

33. On 26 November 2004 the Radom Regional Court found that the proceedings taken as a whole had not been excessively long. However, certain parts of them had indeed been affected by undue delays. The court pointed to the inactivity of the District Court when the submission of an expert opinion had been delayed. The Radom Regional Court also criticised the fact that the lower court had failed to discipline the plaintiff’s lawyer, who had failed to attend hearings. It further stressed that the District Court had adjourned several hearings without giving sufficient reasons. The court also instructed the lower court to schedule a hearing within twenty-one days.

34. The Regional Court further observed that the case had been complex and that the parties had made numerous requests for evidence to be taken and that those circumstances had had a considerable bearing on the total length of the proceedings. Bearing this in mind, although it found that the length of the proceedings had been excessive, the court concluded that the applicant was not entitled to just satisfaction under the provisions of the 2004 Act.

35. On 18 February 2005 the applicant lodged a second complaint under the 2004 Act. On 24 February 2005 the Radom Regional Court rejected the complaint as it had been lodged within twelve months of the previous complaint (see Relevant domestic law below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. On 17 September 2004 the Law 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”) entered into force. It sets out various legal means designed to counteract and/or redress undue length of judicial proceedings. A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length under Article 2 read in conjunction with Article 5(1) of the 2004 Act.

37. Article 14 provides that the complaining party shall not be allowed to lodge a new complaint in the same case for twelve months after a decision on the merits of the length complaint has been issued.

38. For further references concerning the relevant domestic law and practice in respect of remedies available for the excessive length of judicial

proceedings, in particular the applicable provisions of the 2004 Act, see the Court's decisions in 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 UNREASONABLE LENGTH OF THE PROCEEDINGS

39. 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...”

40. The Government contested that argument.

41. The period to be taken into consideration began on 7 September 1995 and ended on 12 April 2005. It thus lasted nine years and seven months for one level of jurisdiction.

A. Admissibility

1. The Government's first preliminary objection

42. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies available to her 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 had the opportunity, once the proceedings had terminated, 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.

43. The applicant contested the Government's arguments in general.

44. The Court notes that the applicant lodged a complaint, alleging the excessive length of proceedings, under section 5 of the 2004 Act. On 26 November 2004 the Radom Regional Court found that the proceedings' length had been excessive. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak v. Poland* (dec.) no. 24549/03, §§37-43).

45. The Court has already held that having exhausted the available remedy provided by the 2004 Act the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Cichla v. Poland* no. 18036/03, §26, 10 October 2006; *Jagiello v. Poland*, no. 59738/00, §§24-25, 23 April 2007).

46. Accordingly, the Court concludes that, for the purposes of Article 35§1 of the Convention, the applicant has exhausted domestic remedies. It follows, that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

2. The Government's second preliminary objection

47. The Government further submitted that the applicant could no longer claim to be a victim of a violation of the Convention since the Radom Regional Court in its decision of 26 November 2004 had acknowledged that the length of the proceedings in the present case had been excessive.

48. The applicant contested the Government's arguments, alleging that she had suffered pecuniary and non-pecuniary loss due to the excessive length of proceedings, which had not been remedied by the court's decision of 26 November 2004.

49. The Court reiterates that an applicant's status as a victim within the meaning of Article 34 of the Convention depends, *inter alia*, on whether the redress afforded at domestic level on the basis of the facts about which he complains before the Court is adequate and sufficient having regard to Article 41 of the Convention (see *Jagiello*, cited above, §28).

50. In the present case the Radom Regional Court found a violation of the applicant's right to a hearing without unjustified delay. However, it awarded her no just satisfaction. In these circumstances the Court does not find that the redress obtained at the domestic level was sufficient to deprive the applicant of victim status for the purpose of Article 34 of the Convention. Thus, the Government's second objection must therefore be dismissed as well (see *Palgutova v. Slovakia*, no. 9818/02, 17 May 2005 § 47-49).

51. The Court concludes 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

52. 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).

53. 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, and *Jagiello*, §§ 31-34, cited above).

54. 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.

55. In particular, the Court notes that a mere statement given by the Radom Regional Court that the applicant contributed to the length of the proceedings does not suffice to justify its refusal to grant compensation, since it acknowledged their excessive length (see paragraph 34 above).

56. The Court further finds that as the proceedings in the present case lasted almost ten years in one instance, exceptional arguments should have been raised to support a decision not to award any just satisfaction.

57. Finally, the Court concludes that in not awarding compensation the Radom Regional Court 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).

58. 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

59. 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

60. The applicant claimed 19,774 euros (EUR)¹ in respect of pecuniary and non-pecuniary damage.

61. The Government found the sum to be exorbitant.

62. 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 EUR 7,200 in respect of non-pecuniary damage.

¹ PLN 70,000

B. Costs and expenses

63. The applicant also claimed EUR 35,835¹ for the costs and expenses incurred before the domestic courts. She further claimed EUR 424² for the costs and expenses incurred before the Court, namely an advance fee paid to the lawyer, who prepared and submitted observations on her behalf. In addition, the lawyer, who represented the applicant before the Court, claimed EUR 2,119³ as his attorney's fee.

64. The Government found these amounts to be exorbitant and of a highly speculative character, since the applicant failed to provide any documents in support thereof. The Government left to the Court's discretion, whether the expenses incurred during the proceedings before the Court were actually and necessarily incurred and reasonable as to quantum.

65. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 on an equitable basis the sum of EUR 800 for the proceedings incurred before the Court.

C. Default interest

66. 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, the following amounts, to be converted into PLN (Polish zlotys) at the rate applicable at the date of settlement:

¹ PLN 126,858

² PLN 1,500

³ PLN 7,500

- (i) EUR 7,200 (seven thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 800 (eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President