



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

FOURTH SECTION

CASE OF KUCZKOWSKA v. POLAND

(Application no. 2311/04)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

This judgment may be subject to editorial revision.

In the case of Kuczkowska v. Poland,

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

Giovanni Bonello, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 2311/04) 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 Małgorzata Kuczkowska (“the applicant”), on 22 December 2003.

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

3. On 16 November 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 1951 and lives in Warsaw.

A. Main proceedings

5. On 3 June 1991 the applicant instituted civil proceedings for dissolution of a co-ownership and division of an inheritance before the Warsaw District Court (*Sąd Rejonowy*). On 18 November 1992 the case was transmitted to the Pruszków District Court.

6. Between 24 February 1993 and 28 May 2003 the court held 18 hearings.

7. On 7 June 2004 the Pruszków District Court gave a partial decision in the case. The court held that, following further proceedings, a final decision concerning the distribution of the estate would be given at a later stage. The applicant appealed.

8. On 9 June 2005 the Warsaw Regional Court, having examined the partial decision, remitted the case to the District Court.

9. According to the applicant's submissions, from June 2005 until March 2006 no hearing was listed in her case.

10. On 22 August 2007 the Pruszków District Court gave a decision and divided the inheritance. It is unclear whether the applicant appealed against that decision.

B. Proceedings under the 2004 Act

11. On an unspecified date the applicant lodged a complaint with the Warsaw Regional Court (*Sąd Okręgowy*), under section 5 of 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").

12. On 8 March 2005 the Warsaw Regional Court rejected her complaint for a procedural mistake.

13. On 11 April 2005 the applicant again lodged a complaint with the Warsaw Regional Court under section 5 of the 2004 Act. She sought a ruling declaring that the length of the proceedings before the Pruszków District Court had been excessive and that just satisfaction in the amount of 10,000 Polish zlotys (PLN - approx. EUR 2,500) should be awarded to her.

14. On 9 June 2005 the Warsaw Regional Court gave a decision in which it acknowledged the excessive length of the proceedings, finding that there had been some periods of unjustified inactivity (lasting from several months to some two years) on the part of the Pruszków District Court and awarded the applicant PLN 3,000 (approx. EUR 738) in just satisfaction. Referring to the amount of just satisfaction, the court relied on the fact that the applicant and other parties to the proceedings had contributed to their length and that after 2003 the proceedings had been considerably accelerated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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 UNREASONABLE LENGTH OF THE PROCEEDINGS

16. 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..."

17. The Court notes that the proceedings commenced on 3 June 1991. 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 22 August 2007. It thus lasted over sixteen years for one level of jurisdiction (the case was once remitted to the first-instance court, which had given only a partial decision).

A. Admissibility

18. In the present case the Regional Court acknowledged a breach of the applicant's right to a hearing within a reasonable time and awarded just satisfaction which remained well below the maximum limit provided under the 2004 Act and amounted to approximately 7.5% of what the Court would be likely to have awarded the applicant at the time in accordance with its practice, taking into account the particular circumstances of the proceedings (see paragraph 14 above). Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the judgment *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

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

B. Merits

19. 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).

20. 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).

21. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 READ IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

22. The applicant also alleged a breach of Article 13 of the Convention in that she had no effective domestic remedy in respect of the protracted length of proceedings in her case. Article 13 reads:

Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

23. The Government refrained from making any comments in this respect.

24. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under

Article 6 § 1 to hear a case within a reasonable time. However, the “effectiveness” of a “remedy” within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, §§ 154 et seq., ECHR 2000-XI, §§ 156-157).

25. While the subsidiarity principle underlying the Convention system requires the Contracting States to introduce a mechanism addressing complaints about the excessive length of proceedings within the national legal system, they are afforded – subject to compliance with the requirements of the Convention – some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision. In particular, where the State has introduced a compensatory remedy, the Court must leave to it a wide margin of appreciation and allow it to organise the remedy – including the interpretation and application of the notion of “damage” in a given case – in a manner consistent with its own legal system, traditions and the standard of living in the country concerned (see *Kudła* *ibid.*; and *Scordino* (*no. 1*), cited above, §§ 188-189).

26. The fact that in the present case the redress obtained from the domestic court was not sufficient for Convention purposes does not in itself render the remedy under the 2004 Act incompatible with Article 13, albeit that it has consequences for the Court’s assessment of his victim status in respect of the alleged breach of the reasonable-time requirement (see paragraph 18 above, with references to the Court’s case-law, and, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, §§ 49-52, 4 July 2006).

As stated above, the expression “effective remedy” used in Article 13 cannot be interpreted as a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see paragraph 25 above; and, also, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant’s right to an effective remedy under Article 13 of the Convention has not been respected.

27. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed PLN 592,083 in respect of pecuniary and PLN 163,060 in respect of non-pecuniary damage.

30. The Government did not express an opinion on the matter.

31. 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 considers that the applicant must have sustained non-pecuniary damage such as distress and frustration, on account of the protracted length of the proceedings, which cannot be sufficiently compensated by the above finding of a violation. Making its assessment on an equitable basis and having regard to the sum awarded by the domestic authorities, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed PLN 13,364.34 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. She submitted a copy of a contract with her lawyer.

33. The Government did not express an opinion on the matter.

34. 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 considers it reasonable to award the sum of EUR 750 covering costs and expenses under all heads.

C. Default interest

35. 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 12,000 (twelve thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 750 (seven hundred fifty 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 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Giovanni Bonello
President