



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

FOURTH SECTION

CASE OF GNATOWSKA v. POLAND

(Application no. 23789/04)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Gnatowska v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 23789/04) 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 Katarzyna Gnatowska (“the applicant”), on 18 June 2004.

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

3. On 13 September 2007 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 1961 and lives in Zakroczym.

A. Main proceedings

5. On 4 March 1986 the applicant's mother lodged with the Nowy Dwór Mazowiecki District Court (*Sąd Rejonowy*) a motion for the dissolution of a co-ownership and division of an inheritance. The estate comprised, *inter alia*, a farm and plots of land located in Zakroczym. The applicant and her brother were also involved in the proceedings as parties.

6. Between 4 March 1986 and 3 April 1992 the court scheduled fifteen hearings and appointed three experts. In the meantime, the applicant lodged several complaints about the unreasonable length of the proceedings, to no avail.

7. On 3 April 1992 the court stayed the proceedings. They were resumed on 24 July 1995.

8. Between 16 August 1995 and 14 May 2002 the court scheduled twenty-three hearings, thirteen of which were adjourned for various reasons, for instance the need to obtain additional evidence, in particular several experts' reports. Three hearings were adjourned at the applicant's request.

9. On 14 May 2002 the court closed the trial and adjourned delivery of a decision. On 28 May 2002 the same court re-opened the proceedings and ordered that additional evidence be obtained, including experts' reports.

10. On 17 November 2002 the applicant's brother died and the proceedings were stayed. They were resumed on an unspecified date in 2003.

11. Between 20 February 2003 and 1 June 2007 the court ordered four expert reports to be obtained and scheduled sixteen hearings, five of which were adjourned.

12. The proceedings are pending before the first-instance court.

B. Proceedings under the 2004 Act

13. On 5 September 2005 the applicant lodged with the Warszawa Regional Court (*Sąd Okręgowy*) a complaint under 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").

14. The applicant sought a ruling declaring that the length of the proceedings before the Nowy Dwór Mazowiecki District Court had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. EUR 2,500).

15. On 7 October 2005 the Warszawa Regional Court dismissed her complaint on the ground that on the date of the entry into force of the 2004 Act no undue delays in the proceedings could be discerned. Although the court acknowledged in general that the proceedings before 2004 had been unreasonably lengthy, it did not examine the course of the proceedings

prior to the date of the entry into force of the 2004 Act. It stressed that the provisions of the 2004 Act could be applied only to proceedings pending after 17 September 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. 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..."

18. The Government refrained from taking a position on the merits of the applicant's complaint, having regard to the Court's case-law concerning the length of the proceedings.

19. The Court notes that the proceedings commenced on 4 March 1986. 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 has not yet ended. It has thus lasted over fifteen years and four months at one court instance.

A. Admissibility

20. The Government acknowledged that the applicant had exhausted all the remedies available under Polish law.

21. 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

22. 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).

23. 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 her case exceeded a reasonable time, the Warszawa 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).

24. Having examined all the material submitted to it, the Court observes 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 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 1,679,000 Polish zlotys (PLN) in respect of pecuniary damage and 50,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested these claims.

28. 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 14,400 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed PLN 10,000 for the costs and expenses incurred in the proceedings. This amount included PLN 732 in lawyer's fees for preparation and presentation of her case before the Court.

30. The Government contested the claim.

31. 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 the sum of EUR 230 for the proceedings before the Court.

C. Default interest

32. 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 14,400 (fourteen thousand four hundred euros) in respect of non-pecuniary damage and EUR 230 (two hundred and thirty euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into Polish zlotys 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 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 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President