



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

FOURTH SECTION

CASE OF JERZAK v. POLAND

(Application no. 29360/06)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Jerzak 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. 29360/06) 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 Teresa Jerzak (“the applicant”), on 3 July 2006.

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

3. On 25 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 1940 and lives in Sulejówek.

A. Civil proceedings for division of inheritance

5. On 8 March 1994 the applicant lodged an application for division of an inheritance with the Warsaw District Court (*Sąd Rejonowy*).

6. On 7 November 1997 the Warsaw District Court stayed the proceedings. It referred to the fact that related criminal proceedings concerning fraudulent acquisition of land, which could affect the outcome of the case, had first to be terminated.

7. On 9 February 1998 the applicant asked for the proceedings to be resumed.

8. On 3 July 1998 the court refused that request.

9. On 3 July 1998 the applicant complained to the Warsaw District Court about the delays in the proceedings. On 14 July 1998 the court informed her that the proceedings would be resumed after the criminal proceedings had been terminated.

10. On 3 August 2000 the court refused to resume the proceedings. The applicant lodged an interlocutory appeal against that decision. The applicant referred to the fact that the prosecution had discontinued the investigation.

11. On 15 January 2001 the applicant asked once more for the proceedings to be resumed, to no avail.

12. The proceedings were resumed on 14 February 2002.

13. On 30 June 2004 the Warsaw District Court ruled that some of the issues raised in the application, concerning the acquisition of property, should be examined in separate proceedings. Consequently, part of the claim, concerning the expropriation of property, was referred to the Warsaw District Court as a separate case. The applicant appealed. On 26 July 2004 the Warsaw Regional Court (*Sąd Okręgowy*) dismissed the appeal.

14. On 25 October 2004 the court stayed the proceedings pending the outcome of the parallel proceedings for the expropriation of property. The applicant appealed.

15. On 24 October 2006 the Regional Court quashed that decision and resumed the examination of the case. It referred to the fact that the District Court had erroneously referred part of the claim to other proceedings. It relied on the need to examine both cases simultaneously within the scope of the same proceedings.

16. On 9 May 2007 the court stayed the proceedings because the parallel proceedings for the expropriation of property were pending before the appellate court.

17. The case is still pending before the District Court.

B. Proceedings under the 2004 Act

18. On 2 January 2006 the applicant lodged a complaint with the Warsaw Regional Court, alleging a breach of her right to a hearing within a reasonable time. She relied on section 2 of 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”), which entered into force on 17 September 2004.

19. On 9 May 2006 the Warsaw Regional Court acknowledged the excessive length of the proceedings before the Warsaw District Court. It awarded the applicant 200 Polish zlotys (PLN – approximately 50 euros (EUR)) by way of just satisfaction. The court referred to the resolution of the Supreme Court (*Sąd Najwyższy*) of 18 January 2005 (no. III SPP 113/04) in which it ruled that while the 2004 Act produced legal effects as from the date of its date of entry into force, its provisions applied retroactively to all proceedings in which delays had occurred before that date and had not yet been remedied. The Regional Court held that the overall length of the proceedings before the District Court had been excessive, there had been long periods of inactivity and the hearings had not been held on a regular basis. These delays had taken place before the date of entry into force the 2004 Act and had not been remedied afterwards.

Referring to the amount of just satisfaction, the court held that having analysed all the circumstances of the case it found this amount to be sufficient for the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. 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

21. 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...”

22. The Government did not submit observations on the admissibility and merits of the complaint.

23. The period to be taken into consideration began on 8 March 1994 and has not yet ended. It has thus lasted over fourteen years and six months for one court instance.

A. Admissibility

24. In the present case the Regional Court acknowledged a breach of the applicant's right to a hearing within a reasonable time and awarded her the equivalent of EUR 50 in respect of the length of the proceedings (see paragraph 19 above). The just satisfaction awarded by the Regional Court amounts to approximately 0.5 per cent of what the Court would be likely to have awarded the applicant at that time in accordance with its practice, taking into account the particular circumstances of the proceedings.

The Court thus concludes that the redress provided to the applicant at domestic level, considered on the basis of the facts of which she complains before the Court, was insufficient (see *Czajka v. Poland*, no. 15067/02, § 56, 13 February 2007). Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the judgment of *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.

25. It further 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).

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).

28. 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. While the Court is prepared to accept that there may have been justification for staying the proceedings between 7 November 1997 and 14 February 2002 pending the termination of the criminal proceedings, it cannot be said that the domestic court displayed due diligence in dealing with the applicant's case. In particular, the case had already been pending before the Warsaw District Court for over three years prior to the decision to stay the proceedings. Following the resumption of the proceedings no hearings were held in 2003 and due to the erroneous decision of the District Court, quashed by the

Regional Court, the proceedings were stayed between 25 October 2004 and 24 October 2006 (see paragraphs 14 and 15 above). The proceedings are still pending before the first-instance court.

29. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. Regarding the applicant’s allegations that her complaint about a breach of her right to a trial within a reasonable time was not effective, the Court considered it appropriate to raise of its own motion the issue of Poland’s compliance with the requirements of Article 13 of the Convention on account of indications that the applicant 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.

31. The Government did not make any comments in this respect.

32. 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).

33. 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 v. Italy (no.1)*, cited above, §§ 188-189).

34. The fact that in the present case the applicant’s claim for just satisfaction failed and that 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 her victim status in respect of the alleged breach of the reasonable-time requirement (see paragraph 24 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, e.g., *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.

35. 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

36. Lastly, the applicant complained that the length of the proceedings complained of had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

37. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

38. Having regard to its finding under Article 6 § 1 (see paragraph 29 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Kroenitz v. Poland*, no. 77746/01, § 37, 25 February 2003).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 949,360 Polish zlotys (PLN) in respect of pecuniary damage and PLN 50,000 in respect of non-pecuniary damage.

41. The Government contested these claims.

42. 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, and having regard to the fact that the proceedings were stayed for over five years due to objective reasons, it awards the applicant EUR 9,200 in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant also claimed PLN 15,000 for the costs and expenses incurred in order to obtain redress for the violation of the Convention.

44. The Government contested the claim.

45. 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 applicant, who was not represented by a lawyer, the sum of EUR 100 for the proceedings before the Court.

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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 relating to 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* that it is not necessary to examine the complaint under Article 1 of Protocol No. 1 to the Convention;

4. *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 9,200 (nine thousand two hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) for costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of 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;

5. *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