



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

FOURTH SECTION

CASE OF LIDIA NOWAK v. POLAND

(Application no. 38426/03)

JUDGMENT

STRASBOURG

21 October 2008

FINAL

21/01/2009

This judgment may be subject to editorial revision.

In the case of Lidia Nowak 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 30 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 38426/03) 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 Lidia Nowak (“the applicant”), on 9 October 2003.

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

3. On 8 October 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 1945 and lives in Libertów.

A. Main proceedings

5. On 18 November 1993 the applicant divorced.

6. On 17 June 1994 she lodged with the Kraków District Court (*Sąd Rejonowy*) a claim for division of matrimonial property consisting of a family house in Jankówka and a right to a flat in a housing-co-operative in Kraków.

7. Between 8 November 1994 and 2 August 2000, the Kraków District Court scheduled forty-five hearings, nine of which were adjourned and one expert report was obtained.

8. On 13 December 2000 the court issued an interim order (*zarządzenie tymczasowe*) securing the applicant's claim. On 19 December 2000 the defendant appealed against the making of the order. On 19 July 2001 the court amended its order.

9. At a hearing held on 16 November 2001 the Kraków District Court gave a preliminary decision (*postanowienie wstępne*) on the parties' respective shares in the matrimonial property.

10. The applicant and the defendant appealed on 4 February and 12 March 2002, respectively.

11. On 24 January 2003 the Kraków Regional Court (*Sąd Okręgowy*) amended the preliminary decision and dismissed the defendant's appeal. His cassation appeal was rejected on 22 April 2003 on procedural grounds.

12. On 15 March 2004 the court ordered that an expert report be obtained. The report was submitted on 30 July 2004.

13. On 11 October 2005 the court held a hearing.

14. On 7 February 2006 the court ordered that the third expert report be obtained.

15. At a hearing held on 29 December 2006 the applicant's lawyer made a friendly-settlement proposal. The court stayed the proceedings.

16. On 20 July 2007 the District Court resumed the proceedings and delivered a partial decision (*postanowienie częściowe*) in the case, concerning the composition of the matrimonial property. The defendant appealed against this decision. On 7 April 2008 the Kraków Regional Court rejected the defendant's appeal.

17. The proceedings are still pending.

B. Proceedings under the 2004 Act

18. On 23 November 2004 the applicant lodged with the Kraków Regional Court a complaint under section 5 of the Law on 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").

19. She sought a ruling declaring that the length of the proceedings before the Kraków District Court had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. 2,500 euros (EUR)).

20. On 13 January 2005 the Kraków Regional Court dismissed her complaint. The court observed that the proceedings had indeed been lengthy but it was the applicant's husband who had been responsible for the delay in examination of the case. The court categorically stated that the Kraków District Court was not responsible for the protracted length of the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. 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. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

22. On 3 July 2008 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which the applicant had been involved. In respect of non-pecuniary damage, the Government proposed to award the applicant PLN 15,000 (the equivalent of approx. EUR 4,600). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

23. The applicant did not agree with the Government's proposal and requested the Court to continue the examination of the cases. She maintained that the amount offered was too low.

24. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the

examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

25. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length of proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded where it has found a breach of the reasonable-time requirement (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-...; *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

26. On the facts and for the reasons set out above, in particular the low amount of compensation proposed which is substantially less than the Court would award in similar case, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

27. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

28. 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..."

29. The Government refrained from taking a position on the merits of the applicant's complaint.

30. The period to be taken into consideration began on 17 June 1994 and has not yet ended. It has thus lasted over 14 years for one court instance.

A. Admissibility

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

32. 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

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 even if some delays were caused by the applicant's husband it was the trial court's responsibility to discipline the parties in order to conclude the proceedings in a reasonable time (see paragraph 20 above).

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.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. Regarding the applicant's allegations that his 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 his 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."

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

38. 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).

39. 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)* [GC], no. 36813/97, §§ 188-189, ECHR-2006-...).

40. The fact that in the present case the applicant’s complaint under the 2004 Act failed and that she did not obtain any redress from the domestic court does not in itself render the remedy under the 2004 Act incompatible with Article 13.

41. 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).

42. 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.

43. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed EUR 80,000 in respect of pecuniary and non-pecuniary damage.

46. The Government did not comment on this claim.

47. 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 13,200 in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant submitted no claim for costs and expenses.

C. Default interest

49. 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. *Rejects* the Government's request to strike the application out of its list of cases;
2. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of 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 13,200 (thirteen thousand two hundred euros) in respect of non-pecuniary damage, 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 21 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President