



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

FOURTH SECTION

CASE OF POZNAŃSKA v. POLAND

(Application no. 822/05)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of Poznańska 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,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 822/05) 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 Barbara Poznańska (“the applicant”), on 26 December 2004.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołasiwicz 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. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1943 and lives in Katowice.

A. First set of proceedings for payment

1. Main proceedings

5. On 5 January 1993 the applicant filed with the Katowice Regional Court (*Sąd Okręgowy*) a claim for payment of maintenance contributions made between 1987 and 1993 for property located in Katowice, at Stawowa Street.

6. On 23 August 1993 the court held a hearing. The applicant was ordered to specify her claim.

7. On 23 March 1994 the applicant was urged to specify her claim. On 9 April 1994 the applicant complied with the court's order.

8. On 8 June, 21 September and 30 November 1994 the court held hearings, one of which was adjourned on the applicant's motion.

9. On 7 June 1995 the proceedings were stayed at the parties' request.

10. On 11 November 1997 the applicant lodged an application for resumption of the proceedings. They were resumed after thirteen months – on 16 December 1998.

11. On 25 August 2000 the Katowice Regional Court stayed the proceedings pending the completion of civil proceedings for the annulment of a donation contract. The applicant's appeal against this decision was rejected by the Katowice Court of Appeal on 10 January 2002, following the dismissal of her application for exemption from court fees.

12. On 2 March 2004 the applicant lodged an application to resume the proceedings, to no avail.

13. On 9 May 2006 the applicant, following the defendant's death, withdrew her claim.

14. On 15 May 2006 the Katowice Regional Court resumed the proceedings.

15. On 31 August 2006 the proceedings were discontinued.

2. The applicant's complaint under the 2004 Act

16. On 28 July 2005 the applicant lodged with the Katowice Court of Appeal (*Sąd Apelacyjny*) a complaint 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") which entered into force on 17 September 2004.

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

18. On 24 August 2005 the Katowice Court of Appeal dismissed her complaint. It observed that the provisions of the 2004 Act could be applied

only to proceedings pending after 17 September 2004, that is, the date of the entry into force of the 2004 Act. As the main proceedings had been stayed in 2000, the case – in the opinion of that court – was not pending within the meaning of the 2004 Act.

B. Second set of proceedings for payment

1. Main proceedings

19. On 9 December 1996 the applicant lodged with the Katowice Regional Court a claim for payment of maintenance contributions made between 1993 and 1995 for property located in Katowice, at Stawowa Street, together with a request for exemption from court fees.

20. On 21 April 1997 the court dismissed the applicant's request. She appealed against this decision.

21. On 11 August 1997 the Katowice Court of Appeal dismissed her appeal.

22. On 10 January 1999 the defendant lodged a counterclaim against the applicant, together with a request for exemption from court fees.

23. On 12 October 2000 the court, after having examined several requests for exemption from court fees, returned the counterclaim.

24. On 28 March, 9 May, 4 June and 30 July 2001 the court held hearings. Five witnesses gave evidence and the court ordered that an expert report be obtained.

25. On 13 February 2003 the Katowice Regional Court stayed the proceedings pending the completion of the proceedings for the annulment of a donation contract. The defendant's appeal was rejected on 24 November 2003.

26. On 2 March 2004 the applicant lodged an application to resume the proceedings, to no avail.

27. On 12 June 2006 the court resumed the proceedings.

28. On 14 June 2006 the proceedings were discontinued due to the defendant's death.

2. The applicant's complaint under the 2004 Act

29. On 28 July 2005 the applicant lodged with the Katowice Court of Appeal a complaint under section 5 of the 2004 Act. She sought a ruling declaring that the length of the proceedings before the Katowice Regional Court had been excessive and an award of just satisfaction in the amount of PLN 10,000 (approx. EUR 2,500).

30. On 12 August 2005 the Katowice Court of Appeal dismissed her complaint. It observed that the provisions of the 2004 Act could be applied only to proceedings pending after 17 September 2004, that is, the date of the entry into force of the 2004 Act. As the main proceedings had been stayed in 2003, the case – in the opinion of that court – was not pending within the meaning of the 2004 Act.

C. Third set of proceedings for payment

1. Main proceedings

31. At the hearing held on 29 May 2003 in the civil proceedings for compensation, the applicant extended her claim. It was registered on 30 May 2003 by the Katowice Regional Court as a new case.

32. On the same date the Katowice Regional Court requested that the applicant's lawyer comply with the procedural requirements in respect of lodging such a new claim and pay a court fee. An appeal against the decision was allowed by the Katowice Regional Court.

33. Between 1 August 2003 (when the Katowice Regional Court again requested the applicant's lawyer to fulfil the procedural requirements for the statement of claim) and 2 September 2005 (when the Katowice Court of Appeal examined her complaint under section 5 of the 2004 Act), the proceedings focused exclusively on an examination of procedural issues, raised by the applicant and/or her lawyer (namely, whether the exemption from court fees and the authorisation of a legal-aid lawyer granted to the applicant in another set of civil proceedings was *ex lege* extended for the proceedings).

34. In particular, on 14 September 2004 the applicant's lawyer lodged with the Katowice Regional Court an appeal against a decision of that court given on 30 August 2004. The case file was transferred to the Katowice Court of Appeal by virtue of a decision of 1 October 2004. It was sent back to the Katowice Regional Court on 9 November 2004 in order to comply with procedural requirements. That instruction was completed by the Katowice Regional Court on 25 January 2005.

35. On 30 March 2005 the case file was again sent back to the Katowice Court of Appeal, which on 10 May 2005 quashed the decision of 30 August 2004.

36. After the return of the case file on 7 June 2005 to the Katowice Regional Court, no action was taken until 28 July 2005 – the date on which the applicant lodged the length complaint.

37. On 13 March 2006, due to the defendant's death, the court stayed the proceedings.

38. On 27 July 2006 the court discontinued the proceedings.

2. *The applicant's complaint under the 2004 Act*

39. On 28 July 2005 the applicant lodged with the Katowice Court of Appeal a complaint under section 5 of the 2004 Act. The applicant sought a ruling declaring that the length of the proceedings before the Katowice Regional Court had been excessive and an award of just satisfaction in the amount of PLN 10,000 (approx. EUR 2,500).

40. On 2 September 2005 the Katowice Court of Appeal partly allowed her length complaint and confirmed that the proceedings had indeed been protracted between 9 November 2004 and 25 January 2005 and between 7 June 2005 and 28 July 2005. However, the court did not award the applicant any just satisfaction under the 2004 Act. It explained that the legal conditions for granting just satisfaction had not been satisfied, as the case had not reached the *lis pendens* stage.

D. Proceedings for the annulment of a donation contract

1. *Main proceedings*

41. On an unknown date in 1992, the applicant's mother lodged with the Katowice Regional Court a claim for the annulment of a 1990 donation contract in respect of property located in Katowice, at Stawowa Street. It seems that the mother, who had been suffering from atherosclerosis, was represented by the applicant.

42. During the proceedings several psychiatric opinions concerning the mother's state of health were obtained.

43. On 13 July 1995 the Katowice Regional Court gave judgment and declared the donation contract null and void.

44. The first-instance judgment was quashed by the Katowice Court of Appeal on 24 October 1996.

45. On 20 February 2003 the Katowice Regional Court again annulled the donation contract.

46. On an unspecified date the judgment was challenged by the other party to the proceedings.

47. On 2 March 2003 the applicant's mother died. The proceedings have been stayed since that time pending termination of the inheritance proceedings.

2. *The applicant's complaint under the 2004 Act*

48. On 28 June 2005 the applicant lodged with the Katowice Court of Appeal a complaint under section 5 of the 2004 Act. The applicant sought a ruling declaring that the length of the proceedings before the Katowice Regional Court had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. 2,500 euros (EUR)).

49. On 1 July 2005 the Katowice Court of Appeal rejected her complaint on the procedural ground that the applicant was not a party to the proceedings for the annulment of the donation contract. The court relied on section 3 of the 2004 Act, according to which only a party to the proceedings is entitled to lodge a complaint under the 2004 Act. Given that relevant inheritance proceedings were still pending, the applicant could not be recognised as a formal heir of her mother and could not act as a successor party in the proceedings for the annulment of the contract.

E. Proceedings for compensation

1. Main proceedings

50. On 1 July 1999 the applicant lodged with the Katowice Regional Court a claim for compensation.

51. On 15 September 1999 a defendant lodged a counterclaim against the applicant.

52. The first hearing was scheduled for 16 September 1999.

53. In the course of hearings held on 9 November 2001 and 11 January 2002 the Katowice Regional Court heard evidence from eight witnesses.

54. On 29 May 2003 the applicant extended her claim. It was registered on 30 May 2003 by the Katowice Regional Court as a new case (see paragraph 31 above).

55. On 30 April 2004 the Katowice Regional Court ordered compensation in the amount of PLN 2,000 (approximately EUR 500) to be paid to the applicant.

56. On 17 February 2005 the Katowice Court of Appeal increased the amount of compensation to PLN 7,000 (approximately EUR 1,750).

57. A cassation appeal was not lodged.

2. The applicant's complaint under the 2004 Act

58. On 28 July 2005 the applicant lodged with the Katowice Court of Appeal a complaint under section 5 of the 2004 Act. The applicant sought a ruling declaring that the length of the proceedings before the Katowice Regional Court had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. 2,500 euros (EUR)).

59. On 1 July 2005 the Katowice Court of Appeal rejected her complaint on a procedural ground, as it had been lodged after the termination of the proceedings. The court relied on section 5 of the 2004 Act, according to which a length complaint could only be lodged during the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

60. 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 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 THREE SETS OF PROCEEDINGS FOR PAYMENT

61. The applicant complained that the length of the proceedings for payment 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..."

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

63. The Court notes that the first set of proceedings commenced on 5 January 1993. 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 31 August 2006. It thus lasted 13 years, 4 months and 13 days at one court instance.

64. As regards the second set of proceedings for payment, the period to be taken into consideration began on 9 December 1996 and ended on 14 June 2006. It thus lasted 9 years, 6 months and 6 days at one court instance.

65. In relation to the third set of proceedings for payment, the period to be taken into consideration began on 30 May 2003 and ended on 27 July 2006. It thus lasted 3 years, 1 month and 28 days at one court instance.

A. Admissibility

66. 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

67. 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).

68. 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).

69. 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. The Court notes that during the period under consideration the first and the second sets of proceedings were stayed for over 6 and 3 years, respectively, pending the termination of the proceedings for annulment of a donation contract. The domestic court cannot be said to have displayed due diligence in dealing with the applicant's case. In particular, the Court observes that the cases were heard by the court at only one instance, hearings were not held on a regular basis and in the third set of proceedings for payment the court has not held any hearing on the merits (see paragraphs 6, 7, 10, 21, 22, 24, 31-37 above). Furthermore, the Court considers that, in dismissing the applicant's complaints that the proceedings in her cases exceeded a reasonable time, the Katowice Court of Appeal 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). In particular, the domestic court did not take into consideration the period before the entry into force of the 2004 Act on 17 September 2004.

Having regard to its case-law on the subject, the Court considers that in the instant case the length of the three sets of 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 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE CIVIL PROCEEDINGS FOR THE ANNULMENT OF A DONATION CONTRACT

70. The applicant complained that the length of the proceedings for the annulment of the donation contract 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...”

71. The Court notes that the applicant availed herself of the length complaint available under the 2004 Act. It was rejected on procedural grounds: on the date on which she lodged her length complaint, she was not a party to the proceedings. The reasoning of the Katowice Court of Appeal cannot be found arbitrary; the court relied on section 3 of the 2004 Act and the relevant provisions of the Code of Civil Procedure, according to which only a party to the proceedings is entitled to lodge a complaint under the 2004 Act. Given that the relevant inheritance proceedings were still pending, the applicant could not be recognised as an heir of her mother and could not act as a successor party in the proceedings for the annulment of the contract. It follows that this complaint should be declared inadmissible, as the applicant is not a victim, within the meaning of Article 34 of the Convention, of a violation of her right to a hearing within a reasonable time.

72. This complaint must be rejected as incompatible *ratione personae* pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS FOR COMPENSATION

73. The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings for compensation had exceeded a “reasonable time” within the meaning of this provision and that she had not had a “fair trial”.

74. However, pursuant to Article 35 § 1 of the Convention:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...”

75. The Court observes that the applicant failed to make proper use of remedies provided for by the 2004 Act. Her complaint under section 5 of the 2004 Act was rejected on procedural grounds – it was lodged after the termination of the judicial proceedings. Nor has she lodged a claim for

damages under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code.

76. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed PLN 10,000,000 in respect of pecuniary and non-pecuniary damage.

79. The Government contested the claim.

80. 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, the Court considers that the applicant must have sustained non-pecuniary damage. Having regard to the fact that the first and the second sets of proceedings for payment were stayed for a considerable period until completion of another set of civil proceedings, it awards the applicant EUR 13,000 under that head.

B. Costs and expenses

81. The applicant also claimed approximately PLN 338,000 for the costs and expenses incurred before the domestic courts.

82. The Government contested the claim.

83. 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 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.

C. Default interest

84. 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 three sets of proceedings for payment admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of each of the above mentioned sets of proceedings;
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 13,000 (thirteen thousand 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President