



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF GORDON-KRAJCER v. POLAND

(Application no. 5943/07)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Gordon-Krajcer 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 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 5943/07) 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 Wanda Lidia Gordon-Krajcer (“the applicant”), on 3 January 2007.

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

3. On 4 July 2008 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 1949 and lives in Warszawa.

A. Main proceedings

5. On 9 June 1993 the applicant lodged with the Warszawa District Court (*Sąd Rejonowy*) an application for division of matrimonial property. She paid the relevant court fees on 9 November 1993.

6. Between 9 June 1993 and 21 February 2003, the District Court scheduled 28 hearings, 6 of which were adjourned due to the failure of the applicant's husband to appear; only two hearings were scheduled in 1996, no hearing was scheduled between 8 December 1997 and 15 June 1999 and two hearings were scheduled in 2000.

7. On 5 March 2003 the Warszawa District Court delivered a partial decision (*postanowienie częściowe*) on the parties' respective shares in the matrimonial property.

8. Between 4 August 2004 and 16 April 2008, the District Court scheduled 13 hearings, 3 of which were adjourned. No hearing was held in 2006.

9. On 23 June 2008 the Warszawa District Court gave a decision. The applicant appealed. The proceedings are pending before the second-instance court.

B. Proceedings under the 2004 Act

10. On 1 June 2006 the applicant lodged with the Warszawa Regional Court (*Sąd Okręgowy*) 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") which entered into force on 17 September 2004.

11. She sought a ruling declaring that the length of the proceedings before the Warszawa 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)).

12. On 4 August 2006 the Warszawa Regional Court gave a decision. The court held that the 2004 Act did not have retroactive effect and, consequently, examined the applicant's claim only in respect of the period between the entry into force of the 2004 Act on 17 September 2004 and the date on which the complaint had been lodged. The court found that, during that part of the proceedings, there had been some periods of inactivity for which the District Court had been responsible. The court awarded the applicant PLN 2,000 (approx. EUR 526 euros) in just satisfaction.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

14. On 3 March 2009 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 18,000 (the equivalent of approx. EUR 4,200). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

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

16. 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).

17. 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).

18. On the facts and for the reasons set out above, in particular the amount of compensation proposed, 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).

19. 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

20. 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..."

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

22. The period to be taken into consideration began on 9 June 1993 and has not yet ended. It has thus lasted more than fifteen years and ten months for two levels of jurisdiction.

A. Admissibility

23. In the present case the Regional Court partly acknowledged a breach of the applicant's right to a hearing within a reasonable time and awarded her the equivalent of EUR 526 in respect of the length of the proceedings (*see paragraph 12 above*).

24. The Court notes 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. 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

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). 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). In particular, the court did not take into consideration the entire length of the proceedings.

28. 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. 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

29. The applicant also complained that her right to an effective remedy for the length of the proceedings has been violated since the amount of compensation granted by the domestic court had been too low. This

complaint falls to be examined under Article 13 of the Convention, which reads as follows:

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.

30. 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).

31. 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).

32. 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 12 above, and, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, §§ 49-52, 4 July 2006).

33. 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).

34. 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.

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

35. 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

36. The applicant claimed PLN 130,000 (approx. EUR 30,300) in respect of pecuniary and non-pecuniary damage.

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

38. 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 amount awarded at the domestic level, it awards the applicant EUR 12,700 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed PLN 10,000 for the costs and expenses incurred both before the domestic courts and those incurred before the Court.

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

41. 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 and considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 for the proceedings before the Court.

C. Default interest

42. 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. *Dismiss* 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 12,700 (twelve thousand seven hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of 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 amounts 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 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President