



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

FOURTH SECTION

CASE OF KANIEWSKA v. POLAND

(Application no. 8518/08)

JUDGMENT

STRASBOURG

18 May 2010

FINAL

18/08/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kaniewska 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 27 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 8518/08) 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 Grażyna Kaniewska (“the applicant”), on 5 February 2008.

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

3. On 12 March 2009 the President of the Fourth Section of the Court 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).

4. On 24 July 2009 the Government submitted a unilateral declaration and invited the Court to strike out the application, in accordance with Article 37 of the Convention.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1951 and lives in Warsaw.

A. Main proceedings

1. *Facts prior to 1 May 1993*

6. On 22 March 1993 the applicant's mother lodged with the Warsaw Regional Court (*Sąd Wojewódzki*) a claim for a declaration that a notarial deed was null and void (in the framework of inheritance proceedings). The action was instituted against five defendants.

2. *Facts after 1 May 1993*

7. On 30 September 1993 the proceedings were stayed.

8. On 15 January 1994 the applicant's mother died. On 10 January 1995 the applicant confirmed that she wished to continue the proceedings in her stead and requested that the proceedings be resumed.

9. On 22 October 1996 the court refused to resume the proceedings, stating that the applicant had failed to comply with the court's order to produce the inheritance decisions concerning the defendants.

10. The applicant lodged numerous requests for the resumption of the proceedings, to no avail. She submitted that the courts had refused to serve on her the requested decisions, since she was not the defendants' relative.

11. On 20 September 2004 the proceedings were eventually resumed on the applicant's request.

12. On 16 November 2004 the court held a hearing.

13. On 13 April 2005 the court stayed the proceedings. The applicant did not lodge an appeal against this decision.

14. The applicant lodged two motions for the resumption of the proceedings. They were dismissed by the court on 23 October and 15 December 2006. The applicant lodged an appeal against the second decision.

15. On 23 October 2007 the Warsaw Court of Appeal amended the decision of 15 December 2006 and resumed the proceedings. The court held that the decision of 13 April 2005 was ill-founded since there were no legal grounds for staying the proceedings.

16. On 22 October 2008 the court held a hearing.

17. On 23 October 2008 the Warsaw Regional Court gave judgment dismissing the applicant's plea as unfounded. On 3 December 2008 the applicant lodged an appeal. It appears that the proceedings are still pending.

B. Proceedings under the 2004 Act

18. On 30 July 2007 the applicant lodged with the Warsaw Court of Appeal 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. She sought a ruling declaring that the length of the proceedings before the Warsaw Regional Court had been excessive. She asked for the acceleration of the proceedings and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. 2,500 euros (EUR)).

19. On 6 September 2007 the Warszawa Court of Appeal dismissed the complaint. The court held that on 17 September 2004, the date on which the 2004 Act had entered into force, the proceedings in the case had been stayed. Therefore, in the court's opinion, there was no undue delay on the part of the trial court. The court further found that after the resumption of the proceedings on 20 September 2004 there had been no inactivity for which the Regional Court could be held responsible.

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; 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

21. On 24 July 2009 the Government submitted a unilateral declaration similar to that in the case of *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 PLN 20,000 to the applicant (the equivalent of approx. 5,000 euros (EUR)). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

22. The applicant did not agree with the Government's proposal. She considered that the amount proposed did not constitute sufficient just satisfaction for the damage she had sustained and requested the Court to continue the examination of the application.

23. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application or part of 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).

24. 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).

25. On the facts and for the reasons set out above, in particular the amount of compensation proposed, which is substantially less than the Court would have awarded in similar cases, the Court finds that the Government failed to submit a statement offering 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, by contrast, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

26. 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 the examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

27. The applicant first complained that the proceedings in her case were unfair. In particular, she alleged errors of fact and law committed by the courts and wrong assessment of evidence. She did not rely on any specific provision of the Convention. This complaint falls to be examined under Article 6 § 1 of the Convention which, in its relevant part, reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

28. However, the Court reiterates that, under Article 35 § 1 of the Convention the Court may only deal with the matter after all domestic remedies have been exhausted. The Court notes that since the civil proceedings are still pending, the applicant's complaint is premature. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

29. 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...”

30. The Court notes that the proceedings commenced on 22 March 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 has not yet ended. It has thus lasted until the present day almost seventeen years for two levels of jurisdiction.

A. Admissibility

31. 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

32. 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).

33. 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 (see paragraph 19 above), the Warsaw 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).

34. 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 the proceedings have been stayed for some thirteen years (from 1993 until 2004 and 2005 until 2007). Further, it cannot be deduced from the facts of the case that the applicant bears sole responsibility for the staying of the proceedings (see also the court's decision of 23 October 2007, paragraph 15 above).

Having regard to the above considerations and 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.

IV. 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 410,000 (the equivalent of approx. 102,500 euros (EUR)) in respect of pecuniary damage. As regards the non-pecuniary damage the applicant emphasised that she had experienced stress due to the excessively lengthy proceedings and asked for PLN 200,000 (the equivalent of approx. EUR 50,000) in compensation under this head.

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, it awards the applicant, ruling on an equitable basis, EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed PLN 2,241.48 (the equivalent of approx. EUR 560 euros) for the costs and expenses incurred before the domestic courts and the Court. She submitted an invoice for translations in the amount of PLN 549,00 (the equivalent of approx. EUR 137).

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 300 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. *Dismisses* 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 12,000 (twelve thousand euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State 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 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 18 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President